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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Myanmar, prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1992/58

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Introduction

1. On 3 March 1992, at its forty-eighth session, the Commission on Human Rights adopted resolution 1992/58, entitled "Situation of human rights in Myanmar". In that resolution, the Commission noted that, in accordance with the Charter, the United Nations promotes and encourages respect for human rights and fundamental freedoms for all, and that the Universal Declaration of Human Rights states that "the will of the people shall be the basis of the authority of government". It also noted with particular concern in that regard that the electoral process initiated in Myanmar by the general elections of 27 May 1990 had not yet reached its conclusion; that no apparent progress had been made in giving effect to the political will of the people of Myanmar, as expressed in the elections; and that the final results of the elections had not even been officially released; also noted that many political leaders, in particular elected representatives, remained deprived of their liberty and that Daw Aung San Suu Kyi was still under house arrest; and noted with concern the seriousness of the situation of human rights in Myanmar, the existence of important restrictions on the exercise of fundamental freedoms and the imposition of oppressive measures directed, in particular, at minority groups and the continuing exodus of Myanmar refugees to neighbouring countries, including Myanmar Muslim refugees to Bangladesh.

2. By paragraph 3 of resolution 1992/58, the Commission on Human Rights decided to nominate a special rapporteur to establish direct contacts with the Government and with the people of Myanmar with a view to examining the situation of human rights in Myanmar and to report to the General Assembly at its forty-seventh session and to the Commission on Human Rights at its forty-ninth session.

3. After consultation with the Bureau, the Chairman of the Commission appointed, on 10 June 1992, Dr. Yozo Yokota (Japan) as Special Rapporteur on the situation of human rights in Myanmar, pending approval of Commission resolution 1992/58 by the Economic and Social Council.

4. At its substantive session of 1992, the Economic and Social Council adopted decision 1992/235 of 20 July 1992, approving Commission resolution 1992/58.

5. The preliminary report of the Special Rapporteur was submitted to the Secretary-General of the United Nations for dissemination to all States Members of the United Nations at the forty-seventh session of the General Assembly in November 1992 (A/47/651, annex).

6. This comprehensive report is submitted to the Commission on Human Rights at its forty-ninth session for consideration by the Commission.

I. BACKGROUND

A. General

7. The situation of human rights in Myanmar was first considered by the Commission on Human Rights at its forty-sixth session, in 1990, under the procedure established by Economic and Social Council resolution 1503, after

having been considered by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities at its fortieth and forty-first sessions, in 1988 and 1989, respectively. In 1991, the Commission continued its consideration of the situation in Myanmar under the procedure established in resolution 1503.

8. As mentioned above, the Commission decided at its forty-eighth session to appoint a special rapporteur to examine the situation of human rights in Myanmar and to report to the next sessions of the General Assembly and the Commission on Human Rights. The Commission also charged the Special Rapporteur with the expressed tasks of following any progress made towards the transfer of power to a civilian government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar.

B. Chronology of events pertinent to the situation

9. In 1948 the Union of Myanmar (then called Burma) gained its independence from British colonial rule. From 1948 until 1962, the country was governed by a parliamentary democracy based on the Constitution of 2 September 1947.

10. The Constitution was drafted by consensus among the Barmar ("ethnic Burmans" who comprise approximately two thirds of the population) and most of the ethnic minorities including the Shan, Rakhine (Arakan), Kayin (Karen), Mon, Kachin, Chin, Karenni and Pa-o. It provided for a federal system of government with separate executive, legislative and judicial branches. The states, while belonging to the Union, were considered autonomous.

11. According to Article 201 of the Constitution, ethnic minorities had, in theory, the right to secede from the Union, but, under Article 202, this right was not to be exercised until ten years from the date of entry into force of the Constitution.

12. In March 1948, an armed insurgency against the then Government of Burma was begun by the Communist Party of Burma. From 1948 through 1961, various minority ethnic groups joined the armed insurgency.

13. In March 1962, General Ne Win took power in a coup d'état. He installed a one-party (Burma Socialist Programme Party) military regime with military tribunals and courts and operated without a constitution. He embarked upon a programme known as the "Burmese Way to Socialism".

14. On 28 March 1964, the Law to Protect National Unity was promulgated, banning all political parties except the Burma Socialist Programme Party.

15. In 1974 a new Constitution was drafted. However, one-party rule continued.

16. By 1988, widespread dissent and demonstrations began in reaction to two factors, firstly the suppression of all civil and political rights since the 1962 overthrow of the constitutional Government; and secondly, the economic failure caused by the Burmese Way to Socialism.

17. The economy was in crisis. In September 1987, the major currency notes had been demonetized and approximately 70 per cent of all currency in circulation had been rendered valueless. There were also severe shortages of domestic goods and the country, once one of the world's major rice producers and exporters, lost its capacity to maintain its international market.

18. From March until June 1988, students and workers demonstrated, and were attacked by the military. Hundreds of civilians were arrested, many were severely injured or died from ill-treatment in detention and many persons were summarily or arbitrarily executed. On 21 June 1988 the Government imposed a ban on all public gatherings.

19. On 23 July 1988, General Ne Win resigned as party leader, promising economic reform and the holding of a referendum to end one-party rule and institute a multi-party system.

20. Demonstrations continued and the army and riot police continued the crackdown on demonstrators. It is reported that between 8 August, when a nationwide strike was held, and 12 August approximately 3,000 persons were killed. All educational institutions were closed.

21. On 18 September 1988, the military took power. The State Law and Order Restoration Council (SLORC) was set up under the chairmanship of the Chief of Staff, Senior General Saw Maung.

22. The National Assembly (Pyithu Hluttaw), the Council of State and other governmental bodies were dissolved. Senior General Saw Maung became Prime Minister, Minister of Foreign Affairs and Minister of Defence.

23. Free elections were promised by SLORC. In response, three main opposition parties were established: the National League for Democracy (NLD); the National Unity Party (NUP, reconstituted from the Burmese Socialist Programme Party) and the League for Democracy (LDP).

24. On 23 September 1988, Senior General Saw Maung, as Chairman of SLORC, made a statement to the effect that three conditions for the holding of elections would have to be met:

> "1. Maintenance of law and order.
>
> "2. Providing smooth and secure transportation.
>
> "3. The State Law and Order Restoration Council will strive for better conditions of food, clothing and shelter of the people and render necessary assistance to the private sector and the cooperatives to do so."

25. In 1988, Daw Aung San Suu Kyi, daughter of U Aung San (the national hero of independence) and General Secretary of the National League for Democracy, was banned from campaigning on the grounds that she maintained unlawful association with insurgent organizations.

26. On 20 July 1989, Daw Aung San Suu Kyi was detained by Government forces. Numerous others, including most of the important opposition political leaders to SLORC, were also arbitrarily detained, and many of them remain so to date.

27. In May 1990, general elections were held. The opposition (NLD) was reliably reported to have won the elections overwhelmingly.

28. SLORC set up an Election Commission to scrutinize the results of the elections and all expense accounts of all elected representatives (SLORC has stated it does not want to rush the Commission), the winners of the elections will be announced and certificates to the winners will be issued.

29. A Constitutional Convention to decide the terms of the drafting of the constitution has been announced by SLORC with the participation of all parties. According to SLORC order No. 11/92 of 24 April 1992 and citing SLORC order No. 1/90 of 27 July 1990 (contained in Government of Myanmar Press Release No. 82, dated 26 June 1992) and according to SLORC order No. 9/92 dated 28 May 1992, SLORC, through its Steering Committee, was given responsibility for the preparation of the Coordinating Meeting for the Convening of the National Convention. Leaders of lawfully existing political parties were to attend in numbers designated by the Steering Committee. The nomination list of those representatives were to be sent to the Steering Committee 11 days prior to the meeting. The Steering Committee was given responsibility for inviting those elected individual representatives "standing lawfully" on the day the Order (28 May 1992) was issued. The Steering Committee was deemed responsible for: determining the programmes related to the holding of the meeting; the topics to be discussed; determining the procedures; determining as necessary the daily and travel allowances of representatives attending the meeting; submitting the report on the meeting to SLORC within one month of the meeting; and carrying out all administrative functions.

30. The National Convention was convened for one-and-a-half days in January 1993 and was then postponed until 1 February when it was reconvened.

31. Beginning in early 1992, a mass exodus of Myanmar Muslims from Northern Rakhine state into Bangladesh was reported. At least 250,000 such persons are reliably reported to have sought refuge for fear of persecution. On 28 April 1992, the Governments of Myanmar and Bangladesh signed an agreement for the safe, voluntary return of the refugees. The repatriation programme was suspended and has now been resumed. At present many refugees appear unwilling to return to Myanmar without adequate international monitoring. According to sources, as of January 1993, approximately 17,000 refugees have returned to Myanmar; however the voluntary character of the return has been questioned and is of great concern to the international community.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

32. At the invitation of the Government of Myanmar, conveyed by a letter of the Minister for Foreign Affairs dated 27 August 1992, and accepted by the Special Rapporteur on 17 September 1992, the Special Rapporteur undertook a visit to that country from 7 to 14 December 1992. Prior to the visit, the Special Rapporteur had been in frequent contact with the Permanent

Representative of Myanmar to the United Nations at Geneva and with the Minister for Foreign Affairs who cooperated fully and facilitated the visit which was originally scheduled for October but was, however, postponed until December for technical reasons.

33. The Special Rapporteur visited Myanmar from 7 to 14 December 1992. During this visit he was received by the Secretary I of SLORC, the Minister for Foreign Affairs, the Deputy Minister for Foreign Affairs, the Chief Justice, the Attorney General, the Minister for Development of Border Areas and National Races, the Information Committee and other high-level authorities of the Government. He also met with the Myanmar Red Cross Society. He visited some sites relevant to his mandate including Insein Prison, Rakhine state, the Dagon, Shwe Pye Thar and Hlaing Thaya New Townships.

Meetings with the Minister for Foreign Affairs

34. The Minister for Foreign Affairs, U Ohn Gyaw received the Special Rapporteur on 8 and 14 December 1992. During these meetings he discussed a number of different issues relevant to the mandate of the Special Rapporteur. He stressed that, in regard to the National Convention and the drafting of the constitution, over eight different groups would be allowed to participate, representing all segments of society. He said that only the elected representatives were considered competent to draft the constitution, but that they required a mandate to do so. The National Convention would provide that mandate.

35. In regard to turning over the Government to the elected representatives, the Foreign Minister said that from the beginning, there had been a misconception. The mechanism for the transfer of power requires a basis for the transfer. There must be a constitution to determine who, for how long, under what circumstances. All of this had been laid out in SLORC Order No. 1/90. He further stated that the idea that power would be transferred within a certain period, so that the elected representatives could draft their own constitution, had been misunderstood by the international community. This was why Myanmar had "disassociated itself" from Commission resolution 1992/58 on the situation of human rights in Myanmar. The international community was interfering in the internal concerns and sovereignty of Myanmar. In any case, Myanmar was a country with many different ethnic groups and the Government must maintain the integrity of the State.

36. The Convention would be a step towards democracy and the Government wanted to be doubly sure and not make a mistake and go back to the situation of 1988 (to the democracy movement demonstrations). The Foreign Minister said that the United Nations or another country may tell Myanmar to go ahead, but that they could not risk losing a century by making a mistake. He stated that the constitutional process was not held before the elections because of caution regarding the 1988 events. He stated that there were some insurgents who would like to move in from the outlying areas and the Government had a responsibility to maintain normal law and order.

37. Mr. Ohn Gyaw stated that there would not be any international observation of the process because "it is a matter of internal affairs not for too many cooks".

38. In regard to the 1982 Citizenship Act, he said that there were citizens, associate citizens and foreigners. The second group is the offspring of those who were citizens of Myanmar and intermarried with foreigners. For example, he cited that his son was a citizen, while he was not. Under the new law, his son would be granted all the rights of citizens, such as the ability to own land and benefit from all business rights which he had not been allowed to enjoy. He said that 98 per cent of the people benefitting from this new act were of Bengali descent and would thus be able to hold land, but he was not sure associate citizens would be allowed to hold or own land. He stated that persons who could not produce an identity card would have a problem.

39. Concerning the utilization of the Office of the United Nations High Commissioner for Refugees (UNHCR) to facilitate the repatriation of Myanmar Muslims to Rakhine state, he said that Myanmar had not asked for one penny from the international community or UNHCR for the repatriations. The Government was paying for all of the aid. He further stated that the idea that these persons' goods, lands, and houses had been taken away is false. Myanmar is taking care of the problems and is able to cope with the flows. Nor does Myanmar need the aid of the International Committee of the Red Cross.

40. He stated that some subversive campaigns in Bangladesh, kept persons from coming back. These insurgents are causing trouble to the Bangladesh Government and they are trying to convince people not to repatriate. There are some persons from the Middle East who are promising jobs and other things, but most of these people realize they must repatriate. He said that when the regular immigration process resumes, the Government will send back to Bangladesh those who did not get immigration cards.

41. He said however, that "it is a rubbish thing that people have left Myanmar. These people who are in the refugee camps in Bangladesh are perhaps from Dhaka, but not one single person has left Burma."

42. The Foreign Minister stated that the allegations received as to human rights violations regarding forced portering by the military were completely false. This, he stated was the weakness of the United Nations. It was being manipulated by the insurgents.

Meeting with Secretary I of SLORC, General Khin Nyunt

43. General Khin Nyunt received the Special Rapporteur by stating that his Government had accepted the Special Rapporteur more on a personal basis than on an institutional one.

44. He stated that there were many accusations of human rights violations in Myanmar, but that the Special Rapporteur should understand that Myanmar has a population of 43 million. The Government, he said, was giving priority to the economic well-being of these people. This should not be hampered by a small group of illegal persons. In fact, before the arrival of the Special Rapporteur, there were rumours that some anti-government groups might "stage up" to give a distorted image of the country. They had heard that a person would dress like a monk and lie down in front of the Special Rapporteur's car. But, in fact, during the short period of four years since the SLORC had assumed power, the Government of Myanmar was doing its best to improve the

life and welfare of all the people in that country. In the case of Myanmar, whatever the Government does, it is criticized. All countries should respect human rights without distinction and Myanmar had done its best in that direction.

45. In this regard, General Khin Nyunt said that the three new townships seen by the Special Rapporteur were projects which has endeavoured to improve the life, welfare and economic and social rights of the people. Hlaing Thaya was a place where the poorest people of Yangon had moved. They used to be the illegal dwellers of temples and cemeteries. In this township, the Government had tried to improve the living conditions of the residents by establishing schools, hospitals and other facilities. People were given land free of charge. In Dagon New Township, there are also some more well-to-do people. There are markets and schools and a university would be established soon.

46. He cited the border areas' construction projects of roads and bridges. He said that local inhabitants were voluntarily cooperating in these development projects. Accusations of forced labour were distorted. Such accusations, he said, "are disseminated by the terrorist people and groups".

47. He said in regard to persons who did not make contact with the Special Rapporteur, that there may have been some who did not wish to see the Special Rapporteur. It was not because the Government prevented them from doing so, but because they are engaged in illegal activities. Those who break the law will do the same after their release. He said that some released prisoners were having relations with the minute terrorist groups. There are also some people from political parties who may break the law. They were free to engage in business or other legal activities, but not illegal activities. In any country, law and order must be maintained. Those who break the law must be punished.

48. He said that the slanderous stories about torture and ill-treatment were not true. There may be some prison wardens who treat prisoners badly. They are disciplined in accordance with the law. He said that the Special Rapporteur had been allowed to see more than he had seen the previous year at Insein Prison. The reason why he was not shown more this year, was that there was concern that some prisoners might have caused harm or presented danger to the visitors.

49. He said that during the Special Rapporteur's visit to Rakhine state he saw a lot and could see that the stories coming out were not true. He said that the Special Rapporteur had observed the Mayor's (foot) marathon. The people were enjoying that event enthusiastically. It was not something that a Government could arrange. The event was the third one and had been planned way in advance and not to coincide with the visit. At the end of the month, there would be the traditional boat regatta which many people would attend.

50. He stated that regarding actions by military personnel, Myanmar has a green book which explains rules and regulations to be followed by the members of the armed forces including those concerning punishment in case of violations. Such violations will be tried by a court martial. In the case of serious offenses such as murder or rape, the case may be transferred to an

ordinary court to assure impartiality. These rules and regulations are strictly applied and there is no way that a member of the armed forces would violate the human rights of the ordinary people.

51. He said that the green book was distributed from generals down to the lowest soldiers. The Government does not deny that in the heat of fighting, these regulations may be violated, but the media exaggerates. As soon as such an incident is known, immediate action is taken.

52. He said that his Government knew that one of the two ladies accompanying the Special Rapporteur (the person referred to was the qualified interpreter for the Special Rapporteur) participated in an anti-government demonstration in front of the Embassy of Myanmar in London on 27 May 1991. He said he would show the Special Rapporteur two pictures to prove this. In spite of knowing this, the Government accepted the Special Rapporteur because they thought they should pay respect to him. He said that even after the Special Rapporteur came to Myanmar, her orientation was to organize meetings between the Special Rapporteur and anti-government groups. He stated that he said this not to complain, but simply to call the Special Rapporteur's attention to the fact.

53. He ended the meeting by stating that the Government was attempting to develop the country politically, economically and socially, and that although there were problems, they would overcome them. They could not destroy or disintegrate the country. They would carry on action in accordance with the law against any activity aimed at disunity and destruction of the country.

54. Politicians were quite free to go about their business and to travel freely in the country with the permission of the Government. However, they could not be allowed to disturb the peace and tranquillity or bring about disorder. In order to understand the human rights situation in the country, the situation had to be seen in the total framework as explained by him. The Government is not repressing the people tightly.

Visit to the three new townships

55. The Special Rapporteur was taken on 11 December 1992 to the three new townships, Dagon, Shwe Pyi Thar and Hlaing Thaya. Dagon Township lies about 45 minutes outside of Yangon on the banks of the Nayoma Creek and can be reached by crossing a small bridge on the road which connects it to Yangon. At Dagon New Township, the Special Rapporteur was shown the site of the new university which is to replace Yangon University. The professors from Yangon University will be transferred to the new university. Yangon University will then be used as a post-graduate University. In the first phase the University will accept 5,000 students in August of 1993 and eventually will accommodate up to 80,000 students in a self-contained community with its own water system, hospital, transportation and residential facilities. The education will be partly subsidized by the State.

56. The Government informed the Special Rapporteur that people from Yangon and other areas voluntarily moved to Dagon for a better life. There, they were afforded a plot of land for a nominal fee and were allowed to construct

their own homes. There is a hospital, a new water system, elementary and secondary schools, businesses and other means of livelihood for the inhabitants and low-cost transportation to Yangon.

57. Shwe Pyi Thar is a new township populated by some people who, according to the Government, moved voluntarily, and others who were forced to move because they were living illegally in the city as squatters or homeless persons. For 5,000 kyats they may buy a plot of land 20 feet by 60 feet and may build their own home. Most of the inhabitants are day labourers who earn between 30 to 75 kyats per day and the Government gives some subsidies for the purchase of the land.

58. Here too, there is a hospital, markets, schools and other facilities for the self-containment of the community. The Special Rapporteur was taken for a tour of the approximately 20 to 25 bed hospital where the Special Rapporteur was told that people were being treated for dysentery, tuberculosis and other respiratory diseases, natural and problematic pregnancies and some nutritionally related diseases. The Special Rapporteur was also shown a new youth sports facility with a demonstration by the children of all the activities.

59. Hlaing Thaya is the largest of the new townships with 150,000 inhabitants. It may be reached by ferry boat. The Special Rapporteur was shown the sections first developed and inhabited before 1988. The inhabitants are mostly formerly homeless persons who had been living illegally in cemeteries in Yangon. The Government told the Special Rapporteur that the persons were not forcibly moved, but that once they were told that they were living illegally, they chose to move to Hlaing Thaya. There is a Yangon City Development Committee, which oversees its development and a Director of the Human Settlement Housing Development. There is a committee for the development of plots of land 20 feet by 40 feet, which generally cost 1,500 kyats, but if the family cannot afford this, the Government subsidizes the land. The families build their own homes.

60. Most of the inhabitants were said to be jobless but the Government is trying to find jobs for them. There is social welfare and schooling. There is a 25 bed hospital, which the Special Rapporteur was unable to see due to lack of time. On the way back to Yangon, the Special Rapporteur was shown a modern highway and overpass construction site which had been recently built.

Visit to Insein Prison

61. At Insein Prison the Special Rapporteur was given an extensive tour of the grounds, on which new vegetables and flowers had been planted. He was shown the workshop buildings, the tower, prisoners taking their afternoon bath, the hospital, which appeared to house prisoners instead of sick persons, and a small kitchen with freshly prepared pots of food. The facilities had been freshly painted.

62. The Special Rapporteur was not allowed to see any of the detainees he had requested to meet. These prisoners were detained under SLORC Order 1/88 prohibiting the assembly of five or more persons or under the 1950 Emergency Provisions Act. Several of them belonged to political parties, some were

students and one was a monk. In the case of the monk, U Zaw Tika, the Special Rapporteur received allegations while in Myanmar, that he had died from torture received while in custody at Insein Prison. The authorities told the Special Rapporteur that such a person, as far as they knew, did not exist. The authorities stated that when a monk is arrested, he is defrocked and given a lay name, and suggested that this could be the reason why they were unaware of any such person. According to the prison authorities, five of the detainees the Special Rapporteur requested to see were in good health. These are: U Tin Oo, U Kyi Maung, Zagana, Min Lo Naing and Tin Tun. Five others were reported as "not known to the authorities". They are: U Win Tin, U Khun Sai, U Tun Shwin, Myint Sein and U Shwe Tin.

63. The Special Rapporteur had made a request in writing on the first day of his stay in Myanmar as to the detainees he wished to see and asked for free access to those and other detainees at Insein Prison.

64. After repeated requests made orally, the Special Rapporteur was told that the higher authorities do not interfere with the running of the prison and that the request should be made to the prison authorities. At the time of the prison visit, the prison authorities stated that they were unable to comply with the Special Rapporteur's request to see the detainees because they required authorization from higher authorities. Subsequent to the prison visit, it was explained to the Special Rapporteur that the reason he was not allowed to see the detainees is because the Government was concerned "that some prisoners may give harm or danger to visitors".

Visit to Rakhine state

65. The Special Rapporteur made a one-and-a-half day trip to Rakhine state where he was able to speak with a number of Myanmar Muslim village leaders and to ask them about religious and ethnic tolerance. The villagers were assembled by the Government and Government authorities were seated with the Special Rapporteur during the encounter. Some other villagers were also asked questions by the Special Rapporteur as he passed by with the Government officials.

66. Other persons in Yangon whom the Special Rapporteur had formally requested to see and many persons with whom he either wished to make contact or who had expressed a wish to see him, were not allowed to receive or speak to the Special Rapporteur. Almost all of these persons were visited by the military intelligence. The Special Rapporteur was told that "... persons are free to engage in business or other legal activities but not in illegal activities. There may be some who do not wish to come to see you. It is not because the Government is preventing (them) from seeing you but because they are engaged in illegal activities."

67. In regard to this situation, the Special Rapporteur transmitted on the last day of his visit, 14 December 1992, the following letter to the Government:

"Excellency,

"I have the honour to refer to your letter of 27 August 1992 in which your Government stated that it looked forward to welcoming me to Myanmar as an expression of continuing cooperation with the United Nations.

"As you are aware, by operative paragraph 3 of Commission on Human Rights resolution 1992/58 on the situation of human rights in Myanmar, the Commission decided to nominate a special rapporteur for the purpose of, inter alia, establishing direct contacts with the Government of Myanmar and with the people of Myanmar, including political leaders deprived of their liberty .... I wish to bring to the attention of your Government my concern that, in addition to being prohibited from establishing direct contact with any of the political leaders deprived of their liberty, direct contact with many of the people of Myanmar useful to my mandate, was made impossible.

"It has come to my attention that during the course of my visit, several persons wishing to make direct contact with the Special Rapporteur or persons whom the Special Rapporteur requested to contact, were reportedly visited by members of the intelligence services and told not to establish or receive contact with the Special Rapporteur and the accompanying United Nations staff members. Under Commission on Human Rights resolution 1992/59 regarding reprisals directed at groups or individuals cooperating with the United Nations' bodies, it is stated that threats or intimidation against witnesses or persons wishing to cooperate with the United Nations are prohibited. This resolution further states that Governments should take all steps necessary to protect the lives and physical integrity of these persons.

"I urge the Government of Myanmar to take the necessary steps to comply with the above cited resolution.

"Accept Excellency, the assurances of my highest consideration."

68. By letter dated 23 December 1992, the Minister for Foreign Affairs of Myanmar responded to the Special Rapporteur's letter:

"Dear Professor Yokota,

"I refer to your letter dated 14 December 1992 and I wish to convey that I am quite dismayed at the tone and the substantive thrust of the various points you raised.

"As you are aware, we in Myanmar are consistently sincere in our wish to have a continuing cooperation with the United Nations. But this cooperation cannot be a channel to override the fundamental principles of

national sovereignty and non-interference in the internal affairs of Nation States, as enshrined in the Charter of the United Nations.

"To be specific, you mentioned your mandate as 'establishing direct contacts with ... including political leaders deprived of their liberty ...'. As explained many times previously, I reiterate that there are no political prisoners in this country, but only some politicians who are under detention for breaking the established laws of this nation.

"You also mentioned that 'persons whom the Special Rapporteur has requested to contact were reportedly visited by members of the intelligence services and told not to establish or receive contact with the Special Rapporteur ...'. In this regard, I do regret that you have put in your official letter one side of the story which you were kind enough to qualify by 'reportedly'.

"Even if such an unfounded allegation has taken place, being 'told not to' cannot conceivably be construed as 'threats or intimidation'.

"I avail myself of this opportunity to convey to you our sincere and continuing wish to cooperate with the United Nations in the belief that it is an important element of our systematic endeavour towards establishing the democratic system in an atmosphere of peace, tranquillity, prosperity and orderly processes rather than under anarchy, disintegration of the nation, and tragic and senseless destructive acts.

"This democratic system we aim to establish will be on foundations that are within the parameters of our history, traditions and culture."

Please accept, Professor, the renewed assurances of my high consideration.

Yours Sincerely,

Ohn Gyaw

III. ALLEGATIONS

A. Right to Life

1. Death penalty

69. The death sentence is permitted under Myanmar law; nevertheless, no death sentence has been carried out since 1988. In July 1989, SLORC Order No. 1/89 established military tribunals and SLORC Order No. 2/89 established the procedures for adjudication through military tribunals of persons contravening any SLORC Order. Under these provisions, military tribunals were competent to hand down penalties of no less than three years' imprisonment, life imprisonment or the death penalty.

70. On 6 September 1992, by SLORC Order No. 12/92, military tribunals were revoked and on 1 January 1993, by SLORC Order No. 1/93, all death sentences

passed by civil or military courts or tribunals between 18 September 1988 and 31 December 1992 were commuted to transportation for life (life imprisonment).

2. Summary or arbitrary executions in the context of armed conflict

71. On 5 October 1992, the Myanmar Minister for Foreign Affairs, U Ohn Gyaw, addressed the United Nations General Assembly stating that in April 1992, the SLORC had suspended "all offensive operations in Kaying state and other parts of the country to consolidate national solidarity and unity". (See statement by His Excellency U Ohn Gyaw, Minister for Foreign Affairs and Chairman of the Delegation of the Union of Myanmar, in the general debate of the General Assembly at its forty-seventh session, p. 10).

72. According to other information provided by non-governmental sources to the Special Rapporteur, many of the violations described below that had occurred before the cease-fire reportedly continued to occur. Although the direct military attacks did cease during the rainy season, they are alleged to have begun again. In addition, many of the violations reported did not take place as a result of the direct military "offensives". The Special Rapporteur was told that in areas within or near conflict zones in the Kayin, Kachin and Karenni states, many persons had been summarily executed for being suspected of insurgency by the army. In other cases, civilians suspected of giving aid to insurgents, either materially or by providing food or shelter were executed.

73. One woman from Kayin state told the Special Rapporteur that the military had recently entered her village because they suspected the villagers were lending support to the insurgents. She stated that as she and some other villagers were attempting to escape into the jungle, the military shot dead the two persons behind her.

74. The Special Rapporteur was informed that if the military suspected that villagers were insurgents or were providing aid to insurgents, that entire village was often given orders to relocate by the Township Level Law and Order Restoration Council (LORC). In a number of cases reported to the Special Rapporteur, civilians were executed when they either refused to relocate upon orders or when they attempted to escape to avoid relocation.

75. One 18-year-old woman from Pruso Town told the Special Rapporteur that her 20-year-old husband had been shot dead in front of her for having disobeyed orders to relocate. The woman told the Special Rapporteur that the military had come to her village with location orders. She, her husband and two other persons had fled nearby to work on another parcel of land. The military continued the relocation operation in the area and when they arrived one week later at the location where the woman and her husband had fled, they did not speak or give any warning before shooting. The woman's father-in-law later came out of hiding to fetch some water and was shot dead by the military.

76. The Special Rapporteur was shown a relocation order dated 6 March 1992 (Pruso LORC 385) from Pruso Township, Kayah state. Fifty-seven villages were

listed as being required to move. The Order stated that those who did not move by 20 March 1992 would be considered "bandit-insurgents" and "would be eliminated".

3. Death as a consequence of rape

77. Information received from over 30 interviews with Myanmar Muslim women from Rakhine state and other women from areas of armed conflict indicated that a large number of rapes by entire groups of Myanmar military had been taking place. Many women provided testimony that women in villages relocated by the army were rounded up and taken to military barracks where they were continually raped. In other circumstances, women have allegedly been taken by the military when the husband, or other male in the family, had fled at the approach of the army. Often, the "pretty" or young ones were raped immediately in front of family members and then taken away. Women who had returned to their villages stated that some of the women among them had died as a result of the continual rapes. Two female health workers interviewed by the Special Rapporteur reported that in their clinic, women with rape wounds had been admitted and had later died from bleeding or subsequent infection. It was reported to the Special Rapporteur that on 9 March 1992, members of SLORC Regiment 254 raped and killed nine women (Tomg Du Kai, Lamung Tu, Marau Htu, Jingphaw Lu, Mi Htoi Roi, Hpau Roi, Shi Hpau La Hkawn, Shi Hpau Rim Roi) near Yonan stream, Bhamo township in Kachin state.

78. Due to time constraints and the difficulty in obtaining data on this delicate subject, the Special Rapporteur wishes to point out that his findings are not complete and that the true extent of the problem could not be ascertained during this initial visit.

4. Death of forced porters

79. According to testimony received by the Special Rapporteur, thousands of persons have been killed since 1988 by the military throughout Myanmar while providing forced portering for the military. Amongst the most affected groups seem to be the Myanmar Muslims of Rakhine state, the Karen, Shan and the Mon.

80. Dozens of persons from different states interviewed by the Special Rapporteur provided testimony. Witnesses from several areas told the Special Rapporteur that although some persons were able to bribe their way out of portering, most could not afford to. From the number of persons interviewed who gave corroborating evidence, there is strong evidence suggesting a systematic pattern of summary or arbitrary execution of forced porters.

81. One person told the Special Rapporteur that hundreds of young boys from Kalor and Palong had been taken between February 1989 and March 1990 as forced porters. He stated that most of them were taken when they went to fetch water at the reservoir near the military barracks where seven different regiments were posted including Regiment 114. He witnessed one truckload of about 80 boys being taken from Shan state to Kayah state. He reportedly witnessed boys being put on the front line carrying military equipment and huge rice bags. When they were caught in crossfire, many of the boys were killed. This same witness told the Special Rapporteur that the convicts (Gurkas) were even more

at risk as porters since they were tied together so that they could not escape. In another incident, a young porter was seen being beaten to death by the military for talking back.

82. In a further reported case in Kayah state, porters were allegedly used as mine-sweepers. Two young boys had been taken as porters when they could not pay the 5,000 Kyats demanded as a bribe. They were forced to act as mine-sweepers. When a soldier ventured forth and stepped on a mine, one of the boys was told to carry him, but the soldier died. The porter was then reportedly severely beaten by the other soldiers. He managed to escape, but died a few days later in a hospital in Kalor.

83. The Special Rapporteur was told by dozens of refugees, all Myanmar Muslims from Rakhine state in the Jumapara Transit and Gumdum refugee camps in Bangladesh, that men were routinely taken from the villages for forced portering. Witnesses said that many of the men had been killed while attempting to flee. Numerous women told the Special Rapporteur that their husbands had been taken away for portering and had not been seen again. Furthermore, only a few of these women were able to verify if their husbands were in fact dead or alive.

84. One Karen witness told the Special Rapporteur that during the time he was forced to be a porter, he saw many others killed when they were unable to carry the heavy loads. In one such case, a porter fell and was unable to get up. A sergeant kicked and hit him with a rifle butt until he died. In another case, a man of Indian descent fainted. The same sergeant who had killed the above-mentioned porter, kicked him and then drowned him in a stream.

5. Death during forced labour other than portering

85. According to the testimony of persons taken to provide labour in the construction of railroads (Aung Ban-Loikaw railroad), roads or clearing jungle areas for the military, hundreds of persons were killed by the military when, as with porters, they were unable to carry loads and to continue the hard labour. The labour projects reportedly included two major railway projects, other border development projects of the Government, particularly along the Thai-Myanmar border, and labour for the military particularly in the areas of conflict in the Karen, Karenni, Shan, and Mon areas.

86. It was reported however that the labourers died most frequently as a result of constant beatings, unsanitary conditions, lack of food and lack of medical treatment, once they became sick or wounded and unable to continue work. Witnesses also provided information that some friends or relatives who returned from the work in the border development projects died afterwards as a result of the wounds and diseases contracted during their labour.

6. Death as a result of the prohibition of freedom of political participation, expression and assembly

87. Thousands of persons were reportedly summarily executed during the mass demonstrations for democracy in 1988 and during the student strike in December 1990. A number of persons who had participated in the demonstrations

told the Special Rapporteur that the demonstrators were unarmed and had been attacked by the military. Students, professionals, workers and thousands of poor people including organized beggars were shot or beaten to death while demonstrating. One man in Yangon saw the military transporting bodies in trucks during the following days.

88. One person from the new township, Hlain Thaya, who had been in close proximity to the bodies of the students killed in the 1990 strike, told the Special Rapporteur that the military brought many bodies to Hlain Thaya for mass burial. In one truckload, most of the bodies had bullet wounds, but that in another, the heads and faces of most of the students had been beaten and crushed.

7. Death in custody

89. The Special Rapporteur was given extensive testimony as to the pattern of the deaths in custody, however, the number of persons actually reported to have died while in custody are limited to those who were well-known or persons who were related to or known by those who were able to make contact with the Special Rapporteur. According to evidence received, the true number of deaths are far greater.

90. In the cases received by the Special Rapporteur in which violations of the right to life occurred while in detention and in which charges were filed, these detentions were primarily carried out under SLORC orders, the 1950 Emergency Provisions Act, particularly 5(J) article 17 (1) of the 1908 Unlawful Association Act and article 122 (1) of the Penal Code regarding punishment for high treason. The Special Rapporteur received information that some violations of the right to life of leaders of political activities reportedly occurred after these persons were arrested under laws pertaining to common criminality.

91. Deaths in custody were most frequently reported to have been a result of torture or the result of torture aggravated by the conditions of detention. Detainees are reportedly provided with insufficient, often spoiled food. The vegetables grown within the prisons are allegedly cultivated with human fertilizer further provoking the spread of disease. The prisoners are kept in unsanitary conditions in small cells, forced to sleep on cold cement floors and denied blankets and clothing.

92. It was reported that a doctor made rounds once a week, but that he rarely stopped at any of the cells. In some cases, the Special Rapporteur was told that those who complained of a medical problem were beaten. Medical treatment, if provided, was insufficient in quality and quantity of both medication as well as medical supervision.

93. It was reported that when families tried to provide food, clothing or medicine to detainees, they were either confiscated by the authorities or thrown away.

94. The following provides a list of some political leaders and elected representatives, students and monks who are known to have died while in the custody of the Myanmar authorities:

(a) Maung Thawka, aka U Ba Thaw, 65 years old (NLD CC member) was arrested on 23 July 1989 and sentenced in October 1989 to 20 years' hard labour under Sections 5(A) and 5(B) of the Emergency Provisions Act. He was suffering from severe spondylitis, a spinal disease and was severely beaten during the September 1990 hunger strike in Insein Prison so that his right side was paralysed. He died on 9 June 1991.

(b) U Maung Ko, (NLD CC Member), 52 years old, was arrested on 23 October 1990 and died in jail on 9 November 1990 - while the High Commissioner for Refugees, Mrs. Ogata was on mission in Myanmar. He was not sentenced. He had been a close friend of ASSK, and died from torture.

(c) U Tim Maung Win, 50 years old, (NLD MP for Kayan Township Constituency-2), was arrested on 23 October 1990 and sentenced to 5 years' imprisonment, though it is not clear under which law. He died on 18 January 1991, allegedly from leukaemia, though his family and his family doctor insist that he was not known to have leukaemia before his arrest. He was believed to have died from torture.

(d) U Nyo Win, 60 years old, Secretary of the People's Progressive Party, which was denounced by the SLORC as a communist organization. He was arrested in July 1989 and died as a result of torture on 15 March 1991. He was sent to the hospital in Ygn three days before he died and is reported to have asked after Tin Maung Win (mentioned above - indicating that they had been tortured together. No reason for death was given. It is not known if he had been sentenced).

(e) Bo Set Yaung, aka U Khin Maung, over 80 years old. His wife and eldest daughter were also arrested. Both are still in jail on charges of being in contact with the Communist Party (BCP). He had poor health and was denied medical treatment. He died in solitary confinement in February 1990. It is not known whether he was sentenced.

(f) Kyaw Myo Thant, 25, arrested July 1989, died in May 1990. He was sentenced under SLORC Order 8/88.

(g) U Oo Tha Tun, 82, arrested on 7 May 1990 under 5(j) of the Emergency Provisions Act. Member of the Arakan League for Democracy. Died in July 1991. Cause unknown, also unknown whether he was given medical treatment.

(h) Soe Htay, 19 years old, was arrested on 12 April 1991 and died on 16 April 1991, reportedly as a result of torture. He was an active NLD member. He had not been sentenced.

(i) Mohamed Ilyas, over 65 years of age, a political leader from Arakan state. He was arrested on 16 June 1992 and died in hospital on 19 June. According to testimony received by the Special Rapporteur, he had been severely tortured.

(j) U Zawtikka, sayadaw of Shwe Phone Pyint monastery who died in custody in December 1992. He had been treated in a hospital for cancer but was returned to jail where he died. Sentence and arrest date unknown.

(k) U Soe Win, arrested in 1988, from Mandalay, and died in custody, the date cannot be confirmed.

8. Death of HIV-positive female prostitutes

95. According to information made available, a group of women from Myanmar were either forced (sold) into prostitution or lured into prostitution in Thailand by men promising jobs with high pay. The women contracted HIV/AIDS and were repatriated from Thailand to Burma. After this, according to some sources, the women were killed with cyanide capsules by Myanmar authorities. Another source indicated that the women "disappeared" after being returned to Myanmar. One source told the Special Rapporteur it was likely the women had been killed, although perhaps not by cyanide. Another explanation given was that they returned to their families; while another source indicated that they could never return to their villages and families, but that perhaps some of them went into hiding in other villages where they would not be known. The composite of evidence suggests they may have been killed upon their return to Myanmar but the information gathered by the Special Rapporteur was insufficient to come to a firm conclusion as to the fate of these women.

96. Persons providing information to the Special Rapporteur alleged that the following is only one such case known. Over a dozen rescued Myanmar prostitutes, ages 14 to 20, were seen by the Special Rapporteur, but it was not known how many of them were HIV-positive (estimates of infection of prostitutes in Thailand vary between 60 to 90 per cent).

B. Torture, cruel, inhuman or degrading punishment

1. Treatment of persons during armed conflict

97. The Special Rapporteur received some allegations regarding the ill-treatment by the Myanmar military of insurgent prisoners of war (POWs), however, the Special Rapporteur was not able to assess these allegations because he did not have access to any sites of POW detention or to relevant witnesses, nor was he made aware of any released POWs who may have been able to provide first-hand testimony.

98. In regard to war-time violations, a high-level Government source stated that at the lower level, in the heat of fighting, the rules and regulations in the military manual prohibiting physical integrity rights may be violated, but, the media exaggerates, and as soon as the Government is made aware of such an incident, it takes immediate action.

99. The Special Rapporteur also received some allegations of physical ill-treatment of POWs detained by insurgent groups but due to a lack of access to witnesses, he was also unable to assess these reports.

100. Allegations were received of torture of persons suspected of being insurgents. One 30-year-old Karen man told the Special Rapporteur that he had

been picking pumpkins in a field and was carrying some back to town when he was detained by some soldiers. He was taken to the officer-in-charge who was told by the soldiers that he had been carrying mines. He reported he was then tied up and taken to a location where porters had been rounded-up, and was kept bound while the porters were made to carry heavy loads. He was then told to inform on the insurgents. When he denied knowing anything, he allegedly was beaten and kicked and forced to dig, what he was told, was his own grave. Other forms of torture reportedly used during interrogation were rolling a metal pole up and down his shins, burning him with cigarettes on the feet and hands and covering his head with a cloth pulled tight to the brink of suffocation. After two and a half days, he escaped.

2. Forced portering

101. The Special Rapporteur received information from more than 30 persons regarding the occurrence of torture in the context of portering. The areas reportedly most affected were the Shan, Kayah, Mon, Kayin and Rakhine states. The porters told the Special Rapporteur that they were forced to carry munitions and other military equipment, sacks of rice and various provisions weighing 45 kilograms or more, often through mountainous terrain. They told the Special Rapporteur that the load cut into their shoulders, backs and legs and that when they were too weak or wounded to continue, or simply fell behind, they were beaten with rifle butts, bamboo or metal rods and kicked by the soldiers.

102. One man from Shan state told the Special Rapporteur that he had witnessed about 80 young boys being taken away in an army truck from Kalaw town for portering. They were reportedly taken when they went to the reservoir to get water near the army camp and were transported to another military camp about 95 miles away. One of the boys, who was tortured but escaped from this group, told the Special Rapporteur that they were continuously beaten and that he saw many other porters succumb as a result of the beatings and the heavy loads. The Special Rapporteur has been informed that this witness has since died as a result of ill-treatment.

103. One man from Rakhine state showed the Special Rapporteur extensive scars on his back and shoulders allegedly received from the heavy loads and from beatings. He told the Special Rapporteur that he had escaped across the border and was afraid of being sent back to Myanmar.

104. The Special Rapporteur was informed that the harsh climatic conditions exacerbated the effects of the ill-treatment received by the porters. The mountain temperatures could be very cold at night but in some regions it was extremely hot during the day when they carried their loads, and thus a large proportion of the porters reportedly suffered from malaria, tuberculosis and other respiratory diseases, dysentery, parasitic infestations and infections of their open wounds. The Special Rapporteur was told that there was no medical care for those who were ill and as a result many died on the side of the road. The Special Rapporteur was also told that the porters were continually cursed and were insulted with racial or ethnic slurs.

3. Conditions under detention

105. Students, persons involved in politics, writers, professionals and relatives of suspect persons told the Special Rapporteur that they had been submitted to torture by the Myanmar authorities. The Special Rapporteur was told that most of the torture occurred during the initial interrogation period. The military intelligence units allegedly carried out most of the torture and the units named as having meted out the harshest treatment were the MI 7, and then the MI 6, 11 and 12. The harshest prisons were reportedly Insein, Thayawaddy and Thayet. The latter two, plus Mandalay Prison, which are located far from Yangon, were reportedly where prisoners who were not fit to be seen as a result of torture, would be sent, in order to avoid family visits.

106. Many different torture techniques were reportedly used, including severe beatings with metal rods and chains covered with rubber; the "iron road" which consisted of a metal rod being rubbed up and down the shins; being burned with cigarettes; made to maintain certain positions such as the "motorcycle" for hours; near suffocation or drownings; water torture; sleep deprivation; being made to dig "ones own grave"; and being forced to watch other detainees being tortured. One man told the Special Rapporteur that whilst under detention in an army camp, he was forced to watch women being raped by army personnel.

107. The Special Rapporteur was told by one student from Yangon that he was arrested in 1990 for his part in the demonstrations. He was allegedly interrogated by the MI 6 for a month during which time he withstood beatings, the "iron road", cigarette burnings on the face and hands, the rubber covered chain and near drowning. Afterwards he was taken to Insein Prison where he was kept in a special block (thi thant) away from the common criminals. He told the Special Rapporteur that the detainees in this block were beaten daily. Other students from this same block told the Special Rapporteur about "beating parties" to which one of the prison authorities would invite his friends.

108. Another person told the Special Rapporteur that he was sent to a special compound in Insein Prison called the "soldiers' dog kennel". In order to get through the passageway with a low roof, one was forced to crawl on hands and knees over bits of broken brick. The back part of the compound had large dogs posted all around it who poked their heads through gaps in the mesh fence. This person was taken to the hospital (the main ward A) after the hunger strikes which took place in 1990. There he was allegedly beaten with the rubber-covered chain.

109. Another person from Shan state told the Special Rapporteur that he was put in a cell into which water was constantly dripped regardless of where he would position himself, which resulted in concomitant sleep-deprivation.

110. Some women informed the Special Rapporteur that they were generally treated less harshly than the men with the exception of the MI 7 which allegedly dealt with them as they did with the men. The Special Rapporteur was told that generally the interrogations were carried out by men with a woman present. They reported beatings, sleep deprivation, threats to their

families and hearing other women being beaten. One young woman who was half Karen and half Rakhine was allegedly severely beaten by the MI 7 before she was brought to Insein Prison.

111. Women from the Rakhine state were allegedly brought to army barracks and kept there for raping. The Special Rapporteur received information that some women being forced to relocate were raped in front of their families and one man told the Special Rapporteur he was forced to watch a woman being raped.

112. One person told the Special Rapporteur that in one military prison near Kalaw, a Muslim boy of 17 was ordered to clean out the pigsty, but being Muslim, he refused. He was then brought in front of the other detainees and beaten. The prisoners were forced to watch as the boy's head was repeatedly dunked into a bucket of filth containing live insects. The boy was then allegedly taken away and never seen again.

113. The most difficult aspect of the prison conditions was reportedly the extreme deprivation of water for all purposes. The Special Rapporteur was told many times that detainees were forced to sleep on cold cement and that practically all of them suffered resultant paralysis of their limbs as well as respiratory infections. The food was allegedly insufficient and of poor quality, and sometimes spoiled. The cells were small and there was no provision for adequate hygiene. As a result, almost all detainees also reportedly suffered from dysentery.

114. The Special Rapporteur was told that the doctor came around once a week, but usually did not stop at the cells and never entered them to check persons complaining of a disorder. Patients in hospitals were allegedly rarely given any medication and what they were given was rarely adequate.

C. Disappearances

115. The Special Rapporteur was told that many of the cases of persons in prison had actually begun as disappearances. Many persons reported that their families did not know where they had been taken, and as family visits were only allowed after sentencing, many were held incommunicado detention for months. Some families had learned from other released prisoners or through sympathetic prison guards where their relative was being held, but they could not go to the prison to see them. None of the cases received by the Special Rapporteur of transferred prisoners were reported to their families, particularly as transfers allegedly often took place after torture. Some persons who were detained after the 1988 demonstrations and who were not well known reportedly remain disappeared.

116. It came to the Special Rapporteur's attention that after the 1988 and 1990 demonstrations, many persons disappeared. Numerous persons told the Special Rapporteur that they assumed that their relatives had been killed, but that the authorities denied any allegations and have never made any statements or taken any action to clarify the fate of these persons or to return the bodies for identification and proper burial. It was alleged several times that many bodies of persons killed by the military during the demonstrations were taken for mass burial in a military intelligence compound near the

airport (Yae Kyi Aing) and to the new township, Hlaing Thaya. The Special Rapporteur was requested to encourage investigations into these alleged mass graves to clarify the fates of the disappeared persons.

D. Arbitrary and prolonged detention

117. The Nobel-prize winner, Daw Aung San Suu Kyi is the only person being held under prolonged house detention without trial, under the 1975 State Protection Act. She has been detained since May 1989. It has been reported that her health has suffered and that she recently undertook a hunger strike. Recent reports stated that she would probably be tried after the National Convention and after the new Constitution was drafted under the laws of the new Constitution. The Special Rapporteur was not allowed to see her. High-level authorities told the Special Rapporteur that this was because the law and order needs of the other 43 million inhabitants of Myanmar could not be prejudiced by one person considered important by outside countries or organizations.

118. Other persons in fact have not been arbitrarily detained in the sense that they have been charged with contravention of one of the martial or other emergency laws. In a few cases, persons involved in politics were charged with the commission of a common crime. The Special Rapporteur was told, however, that persons were kept for long periods before being presented before a military tribunal and sentenced.

119. The Special Rapporteur was told that detainees taken before military tribunals were told to plead guilty in order to reduce their sentences. Most told the Special Rapporteur they had refused. The military tribunals were reportedly set up with one "judge" who did not ask for witnesses, evidence or other testimony. The detainees were allegedly not allowed any counsel or other defence and were never told when they would be brought before a tribunal. Most often, after reading the charges against the person, the judge reportedly read out the sentence. Several persons were reportedly not sentenced until days before their release. The majority of persons who provided testimony to the Special Rapporteur were released under SLORC Order 92/11 in April of 1992. A total of over 1,700 persons are known to have been released under this order. Since December of 1992, reports indicate that arrests and detentions have continued. Among the approximately 30 persons known to have been detained are the following 4 persons: Thein Htun, Moe Kyaw Oo, Naing Ko Ko, Yi Yi Myint (female).

E. Freedom of expression

120. During his visit the Special Rapporteur was pleased to note that several members of the foreign press, including members of a foreign television camera crew were allowed entry into Myanmar. These persons were allowed free access to many public areas and public events such as a foot marathon in Yangon, but were not allowed access to detainees inside prisons, or to border regions, including Rakhine state.

121. Nevertheless, the Special Rapporteur was informed that within Myanmar the written press, radio and television continued to be subject to governmental censorship, and that the distribution of written material was also subject to governmental limitations and control.

122. The Government also told the Special Rapporteur that the foreign press would not be allowed at the National Convention or to be present at the drafting of the Constitution.

123. In July 1989, reportedly hundreds of NLD members distributed leaflets. Many were allegedly detained, but the Special Rapporteur was told that it was not known why, of those detained, six young boys (all eight-year olds) were singled out for sentencing.

124. Persons who were detained were allegedly not able to publish at all after they were released. One actor was allegedly unable to appear in movies after his release.

125. One writer told the Special Rapporteur that all writers were obliged to fill in questionnaires regarding their political beliefs. Those who refused or answered "wrongly" were subsequently restricted from publishing and many were detained.

126. The Special Rapporteur was informed by persons released from prison in 1992 that during their detention they were not allowed any written material, including the State-run newspaper, or material with which to write or non-political literature; they were reportedly also denied access to radios.

127. Contact with foreigners is legally prohibited including receiving or passing information or written material.

F. Situation of Myanmar Muslims of Rakhine state

128. The Special Rapporteur was informed by Governments, specialized agencies and non-governmental organizations working in academic settings that Myanmar Muslims of Rakhine state (or Arakan state) comprise approximately 40 per cent of the 3 million inhabitants. He was told that Muslim persons began their migration into Myanmar in the twelfth and thirteenth centuries. A second wave of migration took place in the seventeenth century and a third in the early nineteenth century. This last movement took place while Myanmar, (then Burma) was a colony under British rule. Bangladesh at that time, was part of India and Burma was ruled by greater Indian governance rather than by the authorities in Britain. Movement of persons across what would later become national borders between Bangladesh and India or India and Myanmar was then unimpeded and natural. By the time Burma became an independent Union in 1948, there was a consolidated Burmese Muslim population of Indian/Bangladeshi ethnic origin.

129. Non-governmental sources told the Special Rapporteur that the movement of this group has been restricted since independence. The restrictions on movement prevented them in part from making the initial application for

citizenship in 1948, as well as for any category of citizenship since. Because of the restrictions on movement, even identification or residency cards were often unavailable to these Muslim Rakhine.

130. All of the Myanmar Muslims from Rakhine state interviewed by the Special Rapporteur were born in Myanmar. Most said that their parents had been born in Myanmar, but they were not sure about their grandparents' birthplaces. Some of the persons interviewed spoke Burmese. Most spoke a certain Bengali dialect similar to the Chittagonian dialect which is spoken in the Bangladesh region bordering Rakhine state. The dialects are not identical however, and all of the persons interviewed spoke the dialect specific to Myanmar and not Bangladesh. The Special Rapporteur was informed that despite the fact that the language is indicative of historical residency in Myanmar by the Muslim Rakhine, their language is no longer officially recognized by the authorities as one of the "languages of Myanmar". The new nationality law requires that citizens be able to speak one of the officially recognized languages. Under this law, the Rakhine are thus excluded for qualification as citizens.

131. Nevertheless, contradictory information regarding citizenship status was compiled in that most of the persons interviewed said that they had been allowed to vote in the 1990 general elections, a right understood to be reserved for citizens.

132. The Special Rapporteur was told that when Burma became an independent Union, attempts were made to expel some of the Rakhine Muslim population, and the first flow of refugees took place. A large exodus took place in 1978 when a census was carried out and again in 1991 which marked the present mass exodus to Bangladesh.

133. Since that time,it is alleged, the resettlement policies to places other than sites of origin, have disrupted family integrity and curtailed access of this group to land adequate for making a living. The most recent Muslim Rakhine refugee flow, primarily to Bangladesh, began in 1988. At the time of the Special Rapporteur's visit to Bangladesh, there were approximately 250,000 Myanmar refugees in Bangladesh.

134. The Special Rapporteur had occasion to carry out numerous interviews with these refugees in three different refugee camps; nevertheless, due to time limitations, a complete analysis of the demographics was not possible. The Special Rapporteur, however, was able to ascertain that most of the refugee population comes from four Myanmar sub-districts, Buthidaung, Maungdaw, Rathedaung and Akyab all within Rakhine (Arakan) state. Over 95 per cent of the refugees are Muslim, however some Hindu Rakhine are also among this refugee population.

135. According to the information received and carefully reviewed by the Special Rapporteur, in addition to the non-respect for the family unit and lack of land resources due to arbitrary resettlement, the Muslim Rakhine are one of many ethnic minorities in Myanmar who have not been adequately granted civil, political, social, economic and cultural rights commensurate with those people considered "Burmese". Although the Special Rapporteur received information that some places of worship had been destroyed or debased, the composite of evidence carefully reviewed by the Special Rapporteur indicated

that the systematic repression of the Rakhine Muslims and other minorities is based upon ethnic and racial intolerance rather than religious intolerance. They, like other ethnic minorities, along the Thai-Myanmar border, have been at high risk of being internally displaced by the army and taken for use as forced porters or forced labourers. These practices carried out by the Myanmar authorities, and most frequently the army, have given rise to the alleged grave violations of the physical integrity rights.

136. The Special Rapporteur received large amounts of direct testimony as well as other well-documented evidence indicating that the forced relocation and forced portering has led to a systematic pattern of torture (including rape) cruel, inhuman and degrading treatment, disappearance or arbitrary execution of Muslim and other Rakhine ethnic minorities by the Myanmar authorities.

137. Almost all of the persons interviewed by the Special Rapporteur indicated their fear of returning to Myanmar without international monitoring not only of their actual return, but of the situation once they have returned. They consistently told the Special Rapporteur that they believed the practice of abduction for forced portering continues, and that as a result, they again may be tortured and perhaps would be killed. The fear of repeated rape during forced relocation or as a result of military reprisals for not finding men for portering, was also cited by most of the women interviewed as a reason for resisting repatriation to Myanmar.

138. The Government stated in its Press Release Number 87 of 14 December 1992, that Myanmar has a "tradition of labour". The press release refers particularly to accusations regarding the plight of the "Bangladeshi people in Myanmar's Rakhine state". Previous information received from the Government by the Special Rapporteur referred to this group of persons as Myanmar Muslims of Northern Arakan state (see Permanent Mission of the Union of Myanmar Press Release No. 83, page 2 regarding religious freedom and tolerance). Press Release No. 87 states that the achievements for all-around rehabilitation in the very short period of reconstruction, are mainly due to the volunteer contribution of labour by all nationalities of Myanmar. It states that "slave labour" has never been experienced in Myanmar and that the voluntary contribution of labour has always been a "noble deed". It continues that, "(O)ur religion (Buddhism) taught us that these deeds are the noblest of all and merit attained from them will surely lead to a longer life leading to the attainment of Nibbana, which is the liberation of both mind and body from all forms of attachment... . If some people think that contributing labour is the same as 'slave labour' that has been forced upon the people, then we must say that they have a lot to learn about our traditions, our culture and way of life here."

IV. LEGAL FRAMEWORK

139. This chapter sets out the sources of law applicable to the situation of human rights in Myanmar. In this regard, the Special Rapporteur took note of conventional obligations incumbent upon Myanmar and obligations derived from international customary law as well as the applicable domestic law particularly the Myanmar Penal Code and Code of Criminal Procedure.

A. International law

Charter of the United Nations

140. The obligation of States to respect the fundamental rights of all persons is embodied in the Charter of the United Nations.

141. Article 55 of the Charter states that the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. Article 56 of the Charter states that all Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes. Article 2, paragraph 2 states that all Members ... shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

142. Thus, as a Member State, Myanmar is granted the rights of membership under the Charter and has an obligation to cooperate with the United Nations and other Member States in taking progressive measures and joint and separate action in cooperation with the Organization to promote the observance of the human rights as elaborated in the Universal Declaration of Human Rights within the territory of the State of Myanmar.

143. Further specificity to the obligations under the Charter has been provided by, inter alia, the United Nations Declaration on the Elimination of all Forms of Racial Discrimination (proclaimed by General Assembly resolution 1904 (XVIII) of 20 November 1963); the Declaration on the Elimination of Discrimination against Women (proclaimed by Assembly resolution 2263 (XXII) of 7 November 1967), the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (proclaimed by Assembly resolution 36/55 of 25 November 1981); the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by Assembly resolution 3452 (XXX) of 9 December 1975); the Declaration of the Rights of the Child (proclaimed by Assembly resolution 1386 (XIV) of November 1959); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (proclaimed by Assembly resolution 3318 (XXIX) of 14 December 1974).

Conventional obligations

144. In addition to its obligations under the Charter of the United Nations, other obligations by Myanmar include those arising under the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, the Slavery Convention of 1926 (as amended by its Protocol of 7 December 1953), and the Convention on the Rights of the Child of 1989.

145. In regard to the Convention on the Rights of the Child, Myanmar deposited, at the time of ratification, a number of understandings and reservations pertaining to fundamental principles, inter alia:

(a) Article 37 on torture, cruel, inhuman or degrading treatment or punishment

"The Union of Myanmar accepts in principle the provisions of article 37 as they are in consonance with its laws, rules, regulations, procedures and practice as well as with its traditional, cultural and religious values. However, having regard to the exigencies of the situation obtaining in the country at present, the Union of Myanmar states as follows:

"Nothing contained in article 37 shall prevent, or be construed as preventing, the Government of the Union of Myanmar from assuming or exercising, in conformity with the laws for the time being in force in the country and the procedures established thereunder, such powers as are required by the exigencies of the situation for the preservation and strengthening of the rule of law, the maintenance of public order (ordre public) and, in particular, the protection of the supreme national interest, namely, the non-disintegration of the Union, the non-disintegration of national solidarity and the perpetuation of national sovereignty, which constitute the paramount national causes of the Union of Myanmar.

"Such powers shall include the powers of arrest, detention, imprisonment, exclusion, interrogation, inquiry and investigation."

(b) Article 15 on freedom of association and freedom of peaceful assembly

"The Union of Myanmar interprets the expression 'the law' in article 15, paragraph 2, to mean the laws, as well as the decrees and executive orders having the force of law, which are for the time being in force in the Union of Myanmar.

"The Union of Myanmar understands that such restrictions on freedom of association and freedom of peaceful assembly imposed in conformity with the said laws, decrees and executive orders as are required by the exigencies of the situation obtaining in the Union of Myanmar are permissible under article 15, paragraph 2.

"The Union of Myanmar interprets the expression 'national sovereignty' in the same paragraph as encompassing the supreme national interest, namely, the non-disintegration of the Union, the non-disintegration of national solidarity and the perpetuation of national sovereignty, which constitute the paramount national causes of the Union of Myanmar."

Universal Declaration of Human Rights

146. By resolution 217 A (III) of 10 December 1948, the General Assembly adopted and proclaimed the Universal Declaration of Human Rights "as a common standard of achievement for all peoples and all nations ... by progressive measures, national and international, to secure their universal and effective recognition and observance ...". The Declaration sets out that "Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and

fundamental freedoms". Article 2 of the Declaration further establishes that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind... .

147. The Universal Declaration of Human Rights is an expression of international concern for human rights and for international cooperation of all States with the United Nations bodies charged with monitoring the "effective recognition and observance" of human rights. In addition, however, the Universal Declaration has now gained customary acceptance in regard to the fundamental principles for the recognition and protection of human rights embodied in the Declaration.

148. Article 3 of the Universal Declaration provides that everyone has the right to life, liberty and security of person. Article 5 stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 15, paragraph 1, sets out that everyone has the right to a nationality and paragraph 2 states that no one shall be arbitrarily deprived of his nationality... .

149. Article 29, paragraph 2, of the Declaration states that in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

150. As to the rights and freedoms expressed in articles 3 and 5 of the Declaration, nevertheless, there can be no derogation. They pertain to the nucleus of rights universally considered jus cogens which may not be limited, curtailed or infringed upon for any reason of national emergency, national security, sovereignty, national unity, public order, health or morality. Article 15 of the Declaration, regarding the right to nationality and the prohibition against arbitrarily creating stateless persons, is gaining customary acceptance as a non-derogable principle.

151. Article 6 of the Declaration states that everyone has the right to recognition everywhere as a person before the law. Article 18 sets out that everyone has the right to freedom of thought, conscience and religion... . Under article 9, no one shall be subjected to arbitrary arrest, detention or exile.

152. Article 19 states that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Article 20 provides that everyone has the right to freedom of peaceful assembly and association and that no one may be compelled to belong to an association.

153. With regard to the administration of justice, article 7 states that all are equal before the law and are entitled without discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination.

154. Article 8 states that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

155. Under article 10, everyone is entitled in full equity to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

156. Article 11, paragraph 1 sets out the presumption of innocence and paragraph 2 the proscription on ex-post-facto imposition of the law or of its penalties.

157. These rights and protections are incorporated in the major international and regional human rights instruments. Although Myanmar has not become a party to these international human rights instruments, these principles are also customary in nature although they may be subject to the limitations as allowed by certain states of emergency (see para. 150 above). It is however, understood, as a general principle of law, that derogations by States from their obligations to ensure fundamental rights and protections to persons within their territory are limited to the time of the public emergency which threatens the life of the nation and subject to the limitations on the state of emergency as prescribed by national constitutions. The derogation must be in proportion to the exigencies of the situation and must not be inconsistent with other obligations undertaken in international law. The derogation may not be applied in a discriminatory manner solely on the basis of race, colour, sex, religion or social origin.

Article 3 common to the Geneva Conventions of 1949 and Customary Law

158. On 24 August 1992, the Union of Myanmar acceded to the four Geneva Conventions of 1949 for the protection of war victims. The treaty obligations undertaken by ratification are not retroactive in nature and may not be applied to actions that allegedly occurred prior to ratification. Treaty obligations binding on Myanmar since ratification, as regards conflicts of an internal nature, derive from common article 3 of the Geneva Conventions.

159. In addition to its treaty obligations, Myanmar was, before ratification of the Geneva Conventions, and continues to be, obliged to respect the relevant rules of international customary law, particularly those concerning the "elementary considerations of humanity" in times of armed conflict as well as in times of peace as expressed by the principles in common article 3.

160. As regards obligations in internal armed conflict, the International Conference on Human Rights held in Tehran in 1968 requested the United Nations Secretary-General, "after consultation with the International Committee of the Red Cross, to draw the attention of States Members of the United Nations to the existing rules of international law on the subject and to urge them to observe that in all armed conflicts, the inhabitants and belligerents are protected in accordance with 'the principles of the law of nations derived from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience'". This clause, known as the Martens Clause, was included in the preamble to The Hague Conventions of 1899 and 1907 concerning the Laws and Customs of War on Land and was then

incorporated into the four Geneva Conventions of 1949 (art. 63 of the first, art. 62 of the second, art. 142 of the third and art. 158 of the fourth Geneva Convention).

161. Three customary principles of human rights protection are incorporated in the Martens Clause: (a) that the right of parties to choose the means and methods of warfare, i.e., the right of parties to a conflict to inflict injury on the enemy, is not unlimited; (b) that a distinction must be made between persons participating in military operations and those belonging to the civilian population so that the latter are spared to the extent possible; and (c) that it is prohibited to launch attacks against the civilian population as such.

162. The Martens Clause has acquired a customary character and thus applies independently of participation in the treaties containing it. It is of a non-derogable nature and applies whether or not a state of war has been declared or the state of war is recognized by a party to the conflict. In 1949, the International Court of Justice, in the Corfu Channel case, recognized the customary nature of these humanitarian requirements. It ruled that "elementary considerations of humanity..." belong to the general and well-recognized principles which have to be observed in peacetime as well as in times of armed conflict (The Corfu Channel Case, Merits, I.C.J. Reports 1949, p.22).

163. The International Court of Justice expanded upon this doctrine in the Barcelona Traction case of 1970, when it stated that "there are obligations of a State towards the international community as a whole" (case concerning the Barcelona Traction, Light and Power Company Limited, second phase, Judgment of 5 February 1970, I.C.J. Reports 1970, para. 33). It went on to state that these obligations may arise"... also from the principles and rules concerning the basic human rights of the human person" some of which "have entered into the body of general law".

164. As concerns the application of these principles in situations of peace, the International Court of Justice elaborated upon the Corfu doctrine in 1986 in the Nicaragua v. U.S.A. case when it held that "certain general and well-recognized principles, namely: elementary considerations of humanity, (are) even more exacting in peace than in war" (Nicaragua v. U.S.A., Merits, I.C.J. Reports 1986, p. 114, paras. 215 and 218, citing Corfu Channel, Merits, I.C.J. Reports 1949, p.22).

165. The fundamental guarantees contained in common article 3 are thus applicable in all situations pertaining in the Union of Myanmar:

> "(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed <u>hors de combat</u> by sickness, wounds, detention or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

"To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

"(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

"(b) Taking of hostages;

"(c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

"(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

International Labour Organisation Convention concerning Forced or Compulsory Labour

166. Myanmar is a party to the ILO Forced Labour Convention, 1930 (No. 29), of which article 10 (1) stipulates that "forced or compulsory labour exacted as a tax and forced or compulsory labour to which recourse is had for the execution of public works by chiefs who exercise administrative functions shall be progressively abolished".

167. Article 10 (2) stipulates that where forced or compulsory labour is exacted under the conditions stated in 10 (1), the authority concerned shall be satisfied:

(c) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work;

(d) that the work or service will not entail the removal of the workers from their place of habitual residence;

(e) that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life and agriculture.

168. Article 12 sets out that for forced or compulsory labour of all kinds, the maximum period for which any person may be taken in any one period of 12 months shall not exceed 60 days, including the time spent in going to and from the place of work.

169. Article 16 (2) sets out that in no case shall the transfer of workers be permitted unless all measures relating to hygiene and accommodation which are necessary to adapt such workers to the conditions and to safeguard their health can be strictly applied.

170. Article 16 (3) When such transfer cannot be avoided, measures of gradual habituation to the new conditions of diet and of climate shall be adopted on competent medical advice.

171. Article 17 requires that before permitting recourse to forced or compulsory labour for works of construction or maintenance which entail the workers remaining at the workplaces for considerable periods, the competent authority shall satisfy itself that:

> "(1) All necessary measures are taken to safeguard the health of the workers and to guarantee the necessary medical care and ..."
>
> "(4) in case of illness or accident causing incapacity to work of a certain duration, the worker is repatriated at the expense of the administration;"

172. Article 18 provides that:

> "1. Forced or compulsory labour for the transport of persons or goods such as the labour of porters or boatmen, shall be abolished within the shortest possible period. Meanwhile the competent authority shall promulgate regulations determining, inter alia, ...
>
> "(b) that the workers so employed shall be medically certified to be physically fit, where medical examination is possible, and that where such medical examination is not practicable the person employing such workers shall be held responsible for ensuring that they are physically fit ...
>
> "(c) the maximum load which these workers may carry...
>
> "the maximum distance from their homes to which they may be taken ...
>
> "3. The competent authority shall further provide that the normal daily journey of such workers shall not exceed a distance corresponding to an average working day of eight hours, it being understood that account shall be taken not only of the weight to be carried and the distance to be covered but also for the nature of the road, the season and all other relevant factors ..."

173. Exceptions to the definition of forced or compulsory labour for the purposes of the Convention are provided by article 2:

> "(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
>
> "(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;
>
> "(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases,

invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;"

174. In cases of labour exacted by the State, falling within this category, the obligations incumbent upon the State of Myanmar by virtue of the Charter of the United Nations, customary legal principles embodied in the Universal Declaration of Human Rights and common article 3 of the Geneva Conventions of 1949 regarding the physical integrity of all persons, remain in effect. They must be adhered to in the treatment of all persons providing labour exacted by the authorities of Myanmar regardless of the classification of such labour.

175. Governmental authorities informed the Special Rapporteur that labour on behalf of the State and particularly portering, was not forced, that it was a right of the Government to exact this labour and was in fact an obligation of all persons in Mynamar to provide labour. The legal authority cited was the 1908 Village Act enacted by the British during the colonial period and said to have been incorporated into the 1947 and 1974 Constitutions, in the sense that all laws or regulations existing prior to the drafting of the Constitutions and not specifically rescinded, are considered still in force.

176. However, the Special Rapporteur was informed by numerous high-level authorities and members of the judiciary as well as the Attorney General, that both the 1947 and 1974 Constitutions had been revoked in toto and that for this very reason, there was no legal authority upon which to effectuate the transfer of governmental power.

ILO Convention concerning Freedom of Association and Protection of the Right to Organise of 1948 (No. 87)

177. In 1955 Myanmar ratified the ILO Convention concerning Freedom of Association and Protection of the Right to Organise of 1948 (No. 87) to the effect that:

> Article 2: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.
>
> Article 5: Workers and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.
>
> Article 8 (2): The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

178. Prior to 1988, by Act No. 6 of 1964 and Regulation No. 5 of 1976, workers in Myanmar were restricted to a unitary workers' organization in contravention of articles 2, 5 and 6 of the ILO Convention (see Government of Myanmar Communication to the ILO Committee of Experts, Report No. 24 pp. 48-49). The

Government representative reported to the Committee that since 1988 when the SLORC took power, these regulations have not been formally amended or repealed, but that the unitary trade union structure had been automatically removed and the Act and Regulation had become automatically defunct.

179. This, however, has not resulted in freedom of assembly and freedom to organize trade unions as stipulated by the Convention. No new legislation has been promulgated since 1988 to allow for free workers' assembly and/or organization. SLORC Order 2/88 prohibiting the assembly of five or more persons remains in effect and substantially limits any possibility for freedom of assembly or the right to organize and carry on trade or workers' unions. According to the Government, changes would not occur in this legislation until after the drafting of the new Constitution which, it was said, would contain the appropriate safeguards.

B. Myanmar law relevant to the question of human rights

180. One of the fundamental legal principles is that any law should be: accessible to those to whom it would be applied and to those encharged with upholding the law and those protecting the rights of persons accused of breaking the law; clear and unequivocal; and equitably applied, i.e., applied without discrimination.

181. Non-governmental sources indicated to the Special Rapporteur that even among professionals including those engaged in the law and among persons who are to participate in the National Convention, there is confusion as to what laws apply. One such law in question is the "incorporation" of the 1908 Village Act on portering into the 1947 Constitution, which states that all laws passed prior to the drafting of the Constitution remain extant if not specifically rescinded. The Constitution was cited to the Special Rapporteur by Government sources as the authority for the continuation of the portering law, despite the fact that the Constitution has been abolished. Non-governmental sources indicated confusion as to whether SLORC Order 1/90 regarding the "leading role" participation of elected officials in the drafting of the Constitution applied. At the time the Order was drafted, all potential elected participants were reportedly ordered to acquiesce in writing to this Order upon threat of detention. The Special Rapporteur was informed that ... persons were arrested for refusing to sign. Government sources told the Special Rapporteur that Order 1/90 remains in effect, yet the interpretation and application of the Order were stated by Government officials in contradictory and confusing terms.

Myanmar Penal Code and Code of Criminal Procedure

182. While judicial guarantees set out in the Constitution, according to the Government, do not apply, the Special Rapporteur was informed by Government authorities that those elaborated in the Code of Criminal Procedure applied in all cases heard in civilian courts even when the detention was carried out under a SLORC Order or emergency regulation.

183. Non-governmental sources indicated however, that in the cases of concern to the Special Rapporteur where the person had been detained for reasons

having to do with other than common criminality the judicial safeguards, elaborated below, of the Code of Criminal Procedure are not applied.

184. The Myanmar Penal Code and Code of Criminal Procedure guarantee all persons detained for the commission of a crime for which punishment may be imprisonment for more than one year, transportation or the death sentence, to be charged for the crime committed, to be informed of the charges, to be granted a just and fair trial by a competent court and an appeal to a court in which a fair and impartial judgement may be had. Only cases for "minor" crimes for which punishment would not exceed one year, may, in certain circumstances, be tried in a summary manner.

185. However, the Special Rapporteur received copies of the relevant SLORC Orders and other emergency laws or provisions still in effect which were the basis for detention in most of the cases of violations reported to the Special Rapporteur.

186. SLORC Order 1/91 prohibits civil servants from participating in politics and their dependants or persons under their guardianship from participating directly or indirectly in activities aimed at opposing the Government; 2/88, prohibits the assembly of five or more persons; and 3/90, relating to the right to assemble and campaign, forbids criticism of authorities or the defence forces, insults to SLORC and solidarity of the national races, which may be punishable by up to three years in prison and a fine. Order No. 6/90 of October 1990, bans all unlawful Sangha (Buddhist Monk) organizations except the nine sects of Sanghas and has made action possible against political parties for the "misuse" of religion for political purposes. In addition, the 1962 Printers' and Publishers' Law, as amended by the SLORC in July 1989, remains in effect. Under this law, "legal organizations that have registered and that wish to print and publish documents, books and printed material, will have to register with the Ministry of Home and Religious Affairs and apply for exemption in accordance with the 1962 Printers' and Publisher' Law". All material is prohibited that opposes the SLORC, the regional LORC at different levels, or the Government, insults, slanders or attempts to divide the defence forces, instigates actions that affect law and order and peace and tranquillity or contradicts the orders that have been issued whenever necessary. The 1975 State Protection Act, as amended in August 1991 by the SLORC, remains in effect. It allows the State to detain without trial for up to five years any person "who will do, is doing or has done, an act that endangers the peace of most citizens or the security of the State, or the sovereignty of the State". The 1950 Emergency Provisions Act remains and allows for the imprisonment for up to seven years of any person who either "infringes upon the integrity, health, conduct and respect of State military organizations and government employees", "spreads false news about the Government" or "disrupts the morality or the behaviour of a group of people".

187. In the majority of the cases reported to the Special Rapporteur, the person was tried by a military tribunal in which the safeguards stipulated by the Penal Code and Code of Criminal Procedure did not apply. By SLORC Order No.12/92, Martial Law Orders 1/89 of 17 July 1989 and 2/89 of 18 July 1989, investing certain military commanders within their respective military regions with executive and judicial powers, were rescinded. The Government informed the Special Rapporteur that none of the persons tried and

sentenced before the military tribunals were abolished would be retried by civilian courts. The Government stated that the principle of res judicata applied despite the fact that the trials were summary military trials, but that any person detained and tried subsequent to the rescission of the military tribunals would be tried by a civilian court with all the judicial guarantees of the Code of Criminal Procedure.

Burma Citizenship Law

188. Before 1982, the laws pertaining to citizenship in Myanmar were prescribed by Chapter II, article 10 of the 1947 Constitution (Union Citizenship Act of 1948). Accordingly, Parliament reserved the right to make such laws as it thought fit in respect of citizenship and alienage and any such law could provide for the admission of new classes of citizens or for the termination of the citizenship of any existing classes. The basic law held that "(T)here shall be but one citizenship throughout the Union..." Citizenship was deemed to exist for:

(a) Every person, both of whose parents belong or belonged to any of the indigenous races of Burma;

(b) every person born in any of the territories included within the Union, at least one of whose grandparents belong or belonged to any of the indigenous races of Burma;

(c) every person born in the territories included within the Union, of parents both of whom are, or if they had been alive at the commencement of the Constitution would have been, citizens of the Union;

(d) every person who was born in any of the territories which at the time of his birth was included within His Britannic Majesty's dominions and who has resided in any of the territories included within the Union for a period of not less than eight years in the 10 years immediately preceding the date of the commencement of the Constitution or immediately preceding 1 January 1942 and who intends to reside permanently therein and who signifies his election of citizenship of the Union in the manner and with the time prescribed by law, shall be a citizen of the Union.

189. The 1982 Burma Citizenship Law (Pyithu Hluttaw Law No. 1982-7) supersedes the 1948 Constitution Nationality Laws. The 1982 law establishes that there are three classes of citizens:

citizens
associate citizens
naturalized citizens.

190. One high-level Government official told the Special Rapporteur that the three groups were: citizens, associate citizens and foreigners. Another high-level official told the Special Rapporteur that under the 1948 law, a person born of one Burmese parent and one "foreigner" was still a citizen but that under the 1982 law, this person would become an "associate citizen". Those who had applied and qualified for citizenship before 1982, would now become naturalized citizens.

191. Under the 1984 law, citizens by birth are those who are nationals such as Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D. The Council of State may decide whether or not an ethnic group is national. Every national and every other person born of parents, both of whom are nationals are citizens by birth.

192. The following persons are also citizens:

Persons born of parents both of whom are citizens;

Persons born of parents one of whom is a citizen and the other an associate citizen;

Persons born of parents one of whom is a citizen and the other a naturalized citizen;

Persons born of parents of the above categories, one of these parents having a parent who was either an associate or naturalized citizen.

193. According to the Citizenship Law, applicants for citizenship under the Union Citizenship Act of 1948 conforming to the stipulations and qualifications may be determined as associate citizens by the Central Body. No other standard criteria for this determination is set out.

194. Persons may become naturalized citizens if they are persons who have entered and resided in the State anterior to 4 January 1948, and their offspring born within the State may, if they have not yet applied under the Union Citizenship Act, apply for naturalized citizenship to the Central Body furnishing conclusive evidence. The following categories of persons may also apply for naturalization:

(a) Persons born of parents one of whom is a citizen and the other a foreigner;

(b) Persons born of parents one of whom is an associate citizen and the other a naturalized citizen;

(c) Persons born of parents one of whom is an associate citizen and the other a foreigner;

(d) Persons born of parents both of whom are naturalized citizens;

(e) Persons born of parents one of whom is a naturalized citizen and the other a foreigner.

195. The determination is made by the Central Body. Among the qualifications necessary to become a naturalized citizen is the ability "to speak one of the national languages well". The "national races" and thus the "national languages" are determined by the Central Body. There are registration requirements for the application process to each category of citizenship which require travel out of the villages and perhaps to another State.

196. According to articles 30 (c) and 53 (c), associate and naturalized citizens shall be entitled to enjoy the rights under the laws of the State, with the exception of the rights stipulated from time to time by the Council of State.

197. One Government source informed the Special Rapporteur that associate citizens had all the rights of a citizen by birth except possibly the right to hold land. Foreigners have less business rights and are not allowed to own land. It was not made clear to the Special Rapporteur if this category referred to "naturalized citizens". Other Government sources also told the Special Rapporteur that associate citizens could not own land and that some other differences may apply.

198. No Government official informed the Special Rapporteur of article 8 (b) of the 1984 Burma Act, under which, the Council of State may, in the interest of the State revoke the citizenship, associate citizenship or naturalized citizenship of any person except a citizen by birth.

V. THE NATIONAL CONVENTION FOR DRAFTING A NEW CONSTITUTION AND THE TRANSFER OF POWER TO A CIVILIAN GOVERNMENT

199. Under article 21 (1) of the Universal Declaration of Human Rights, everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

200. Article 21 (3) states that the will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

201. In 1988 the SLORC announced that elections would be held. Two hundred and thirty-three political parties were formed by February 1989. Fifty-three contested the election. The rest either were declared illegal, had boycotted the elections (and were then declared illegal for having boycotted) or could not organize sufficiently to put up candidates, in part, because of the legal restrictions on lawful assembly and freedom to publish and distribute campaign material.

202. On 27 May 1990, general multi-party elections were held. Governmental as well as non-governmental sources told the Special Rapporteur that these elections were held in a free and fair manner. Ninety-three parties contested the elections, of which 27 won seats. Results published by the Government showed that the National League for Democracy (NLD), then headed by the presently detained leaders U tin Oo (Chairman) and Daw Aung San Suu Kyi (General Secretary), won 392 of the 485 seats contested (80 per cent of the vote). Of those, 11 died (1 while in custody) and over 70 were jailed and/or disqualified. There are 281 remaining representatives with 84 of these potential representatives still under investigation as to their campaign expense accounts or other potential campaign irregularities. At present, the NLD is allowed to send 97 MPs and 5 members of the party to the National Convention.

203. The Shan National League for Democracy (SNLD) had 23 elected representatives. Of these, three died (of natural causes) and two were disqualified by the Election Committee. Eight are still being investigated by the Election Commission.

204. The Rakhine Democracy League won 11 seats; the SLORC-backed National Union Party (NUP) won 10 seats; the Mon National Democratic Front won 5 seats; the National Democratic Party for Human Rights won 4 seats. Four other parties won 3 seats each; 5 political parties won 2 seats each; 12 political parties won 1 seat each and 6 independents won seats, totalling 485 seats altogether.

205. Government Authorities informed the Special Rapporteur that the intent of the elections had been misunderstood. Following the mass demonstrations for democracy in 1988, the then Chairman of the SLORC, General Saw Maung, announced the military coup and stated that "the military must first try to solve difficulties and hardships faced by the people and then carry out a general election." It was stated that the purpose of the elections had not been to turn over the Government to the elected party, but to select the persons who would draft the new constitution, after which, there would be a change in government. This turning over of the government would occur only after the new constitution provided a legal basis for doing so.

206. On 27 July 1990 Declaration No. 1/90 stated that a broad-based national conference would be convened so that all factors that should be taken into consideration in drawing up the constitution could be discussed and made available to the drafters of the constitution. The Convention was announced for January 1993.

207. On 24 April 1992, by Declaration No. 11/92, the SLORC announced that there would be meetings with the leading members of the elected parliament from existing legal political parties and the independent elected members of Parliament within two months, for the purpose of convening the National Convention in accordance with Declaration No. 1/90.

208. On 10 July 1992, a coordination meeting for the convening of the National Convention was held. It was chaired by a 15-member SLORC Steering Committee headed by Major General Myo Nyunt, Commander of the Yangon Military Command. Twenty-seven elected members of Parliament from the seven remaining legally-standing parties attended. The rules of procedure were determined by the Steering Committee. After three days, Major General Myo Nyunt announced that a general consensus had been reached that delegates from eight different categories would be invited to participate in the National Convention:

Five delegates from each of the legally-standing political parties;

Delegates who are the elected representatives;

About 200 persons representative of the different "nationalities" in proportions determined by percentage of population;

Peasants - about 100;

Workers - about 100;

Intelligentsia - about 100;

Public servants - about 100;

Special invitees of the Commission - about 50.

These approximately 650 representatives, totalling about 70 per cent of the overall participants, were to be selected by the SLORC, primarily at the township level by the local SLORC representatives.

209. In total, 702 delegates had been named to the National Convention. The representatives of the seven parties which won seats in the elections and which are the only ones of the original twenty-seven which still exist are the NLD, SNLD, NUP, Union Pao National Organization, Lahu National Democratic Party, Mro or Khami National Solidarity Organization and the Shan State Kokang Democratic Party.

210. The Government informed the Special Rapporteur that there would be free discussion at the National Convention within the parameters of the six points determined by the SLORC for discussion:

Non-disintegration of the Union;

Non-disintegration of national solidarity;

Consolidation and perpetuation of sovereignty;

Emergence of a genuine multi-party democratic system;

Development of eternal principles of justice, liberty and equality in the State;

Participation of the military (Tatmadaw) in the leading role of politics in the State of the future.

211. As explained to the Special Rapporteur, the SLORC is responsible for determining and administering the rules of procedure by which the discussions will take place. These rules of procedure have reportedly not yet been specified to the delegates. The SLORC is also responsible for the taking of minutes during the Convention and for preparing the final report to be submitted to the SLORC after the Convention. The SLORC will then convene the Constitutional Drafting Committee.

212. By Declaration 1/90, the SLORC stated that the representatives elected in the multi-party democracy general elections in May 1990, would be responsible for drawing up the new Constitution. According to statements by Government authorities to the Special Rapporteur, Declaration 1/90 remains extant.

213. In regard to Declaration 1/90, during meetings with various Government officials, the Special Rapporteur was variously informed that the elected representatives would be allowed to take a "leading role", that elected

representatives would be allowed to participate in the drafting process in which all opinions expressed in the Convention would be reflected; that they would be allowed a "leading role" but that Constitutional experts as determined and selected by the SLORC would also participate; that participation in the Drafting Committee would be determined on the basis of maintaining the integrity of the State and would be a step in the transition to democracy, but that this determination was a question of internal affairs not to be interfered with by the international community.

214. Non-governmental groups and individuals informed the Special Rapporteur that all elected representatives had been required to sign their agreement to Order No. 1/90. The Special Rapporteur was informed that, several elected representatives and party workers were arrested for refusing to sign.

215. Government officials told the Special Rapporteur that it has not been determined if after the constitution is drafted there will be a referendum to endorse it. No answer was received as to whether a general election will be held to elect the People's Assembly under the new constitution, nor was an answer obtained as to whether the Military Orders and laws instituted by the SLORC would be abolished under the new Constitution. Government sources indicated that these decisions would be taken by the Constitutional Drafting Committee members.

216. The Special Rapporteur was further informed that point number 6 of objectives on the agenda of the National Convention, i.e., the "leading role" of the military (Tatmadaw) in the future government was not an objective agreed to by the elected representatives. The Special Rapporteur was told that it is not clear what role or influence the Tatmadaw is to carry out in the Drafting Committee and how its role in the future, democratic government as defined in the constitution to be drafted was another point of great concern to the elected representatives.

217. The National Convention was announced for January 1993. On 9 January 1993, the National Convention was convened with speeches by the Chairman of the Steering Committee and SLORC member, General Myo Thant. There was no other discussion. Several different national constitutions translated into Burmese were said to have been received for consideration by the delegates. Reports received by the Special Rapporteur indicate that a number of elected representatives decided to attempt discussion as to point number 6 of the objectives, i.e., the "leading role" of the Tatmadaw in the new government. It is reported that the following day, the SLORC announced that the National Convention was to be postponed until February. The delegates were told to return home and not to remain in Yangon. Information received by the Special Rapporteur does not clarify whether these same elected representatives will be allowed to participate when the Convention is reconvened.

VI. CONCLUSIONS

218. The visit of the Special Rapporteur to the Union of Myanmar at the invitation of the Government marked the first time international examination of the situation of human rights in Myanmar has been taken up under a public procedure by the Commission on Human Rights by its resolution 1992/58.

219. The Government facilitated the visit, including travel within the Union of Myanmar to Rhakine state and to all three new townships near Yangon, to the projected site of the new university in Dagon New Township, to Insein Prison, to a youth sports facility, some new highway construction projects and extended many courtesies to the Special Rapporteur.

220. "Full and unreserved cooperation" as required under Commission on Human Rights resolution 1992/58, however, was not extended to the Special Rapporteur. Many persons, including non-governmental organizations, private groups and individuals wishing to make contact with the Special Rapporteur in order to provide information relevant to the performance of his mandate, as well as persons whom the Special Rapporteur had requested to see, were prevented from doing so through intimidation and threats on the part of the military intelligence. The Special Rapporteur was not allowed to see any of the political leaders, particularly the Nobel Peace Prize laureate, Daw Aung San Suu Kyi, and elected representatives deprived of their liberty.

221. Myanmar is a Member State of the United Nations and is thus bound by all the obligations of the Charter of the United Nations without selectivity. Myanmar became a party to the Geneva Conventions of 1949 in August 1992 but has not yet become party to the two Additional Protocols thereto of 1977. Myanmar is not a party to the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights.

222. Myanmar is a party to the ILO Forced Labour Convention, 1930 (No. 29) and in 1955 it ratified the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In regard to Myanmar's compliance with this Convention, at the 79th session of the International Labour Conference held in 1992, the Myanmar Government representative stated that "(T)he new constitution will incorporate the rights of all workers to form their own independent trade unions in conformity with the democratic system." However, it was recalled in that session that the case of Myanmar had been considered the previous year (1991) and that since then, no progress had been made despite the assurances given by the Government representative and that furthermore, "In the meantime, the available information on this subject referred to the extreme degree of atrocities and the unprecedented escalation of violations of human rights committed by the military regime".

223. The Government representative recalled that his country was experiencing a period of transition towards democracy, and asked that his Government be given more time to obtain results. It was then clarified that the availability of the choice of trade union pluralism was an obligation derived from the Convention, that had nothing to do with the political situation, and it was suggested that the Government be asked to take prompt action to correct the situation at the legislative level (see Provisional Records of the International Labour Organisation Conference, 79th session, 1992, pp. 60-61).

224. Myanmar is a party to the Convention on the Rights of the Child of 1989. At the time of ratification, Myanmar deposited a number of understandings and reservations pertaining to article 37 on the prohibition of torture, cruel, inhuman or degrading treatment and article 15 on freedom of association and peaceful assembly. Article 37 pertains to the non-derogable principle of international customary law which prohibits torture, cruel, inhuman or

degrading treatment in all circumstances regardless of the political system, times of political, social or economic transition or threats to the non-disintegration and national sovereignty of a State. Furthermore, when taking into consideration that these reservations and understandings are in the context of the treatment of children, they must be seen as absolutely contrary to the object and purpose of the Convention.

225. In regard to the understandings and reservations deposited on freedom of association and peaceful assembly, it should be taken into account that the "laws" considered applicable in the restriction of these rights are martial laws and other emergency orders imposed by the military Government in order to protect the "supreme national interest, namely the non-disintegration of the Union, the non-disintegration of national solidarity and the perpetuity of national sovereignty". These concepts have been repeatedly invoked by the Government to restrict free participation in the political process and in the transition to a democratic, civilian government. In the context of this Convention, these restrictions are also to be imposed on children. For these reasons, the understandings and reservations in regard to article 15 should also be considered as contrary to the object and purpose of the Convention.

226. Many domestic laws contravene the basic underlying principles of jurisprudence. As a general principle, the laws of a country should be clear, unequivocal and consistent, accessible to the public and equitably applied. Various SLORC Orders including Order No. 1/90 pertaining to the participation of the elected representatives in the Constitutional Drafting Committee, and most particularly, the 1982 Citizenship Law, have been unaccessible to those to whom they would be applied, they have been vague, randomly interpreted and arbitrarily applied. Government authorities themselves, in explaining the law to the Special Rapporteur proffered contradictory interpretations. Lawyers and elected representatives told the Special Rapporteur that they did not have any idea which laws and orders were applied, how they were applied or to whom they applied. The new Citizenship Law provides a striking example of discriminatory application. The Law, which was not actually applied until 1988 (the year the new flow of Rakhine refugees began to Bangladesh) jeopardizes in particular the status of Myanmar Muslims of Rakhine state. Historically, the Rakhine Muslims have been unable to obtain nationality or residency status identification cards and thus cannot now prove any kind of residency or previous nationality status. Secondly, under this new law, persons must prove that they have Burmese nationality back to all eight great-grandparents. The Special Rapporteur was informed that these provisions of the law were directed primarily at the Rakhine Muslim population to forbid them from ever gaining nationality or associate nationality (a category of second-class citizenship). The Special Rapporteur has concluded that the effect of this law is to create conditions which promote statelessness. Categories of persons at high risk of becoming victims of human rights violations may create flows of refugees which overburden other countries and create threats to peace and tranquillity within the region.

227. In regard to restrictions on personal freedoms inter alia, freedom of expression, including the freedom to receive and impart information and the right of peaceful assembly, according to testimony received by the Special Rapporteur, violations occurred primarily as a result of attempts of citizens to participate freely in the political process and the transition to the

democratically elected civilian government. Peaceful assembly of five or more persons, publication and distribution of political or social ideas, literature or ideas critical of the Government or the military, have been systematically repressed.

228. The Special Rapporteur received numerous reports of violations of physical integrity rights. Detentions without minimum guarantees for persons under custody, torture, cruel, inhuman or degrading treatment, disappearances and arbitrary execution have been carried out by the Myanmar authorities. The amount of written and oral testimony received by the Special Rapporteur was copious. Apart from a small amount of written information which was discounted because the Special Rapporteur was unable to independently verify the allegations, the testimony compiled was consistent. It formed the basis for the Special Rapporteur's assessment that these physical integrity violations in Myanmar have arisen primarily in three major contexts: attempts by citizens to participate freely in the political process and the transition to the democratically-elected civilian government, forced portering and forced labour and the imposition of oppressive measures directed at ethnic minority groups.

229. According to information received, some of these violations have been occurring for many years; nevertheless, the evidence compiled by the Special Rapporteur indicates that the violations have not only continued but have increased over the period of the four years beginning on 18 September 1988 when the SLORC took over as the military Government.

230. In regard to summary executions, although the death penalty is permitted under Myanmar law, no death sentence has been carried out since 1988. On 6 September 1992, military tribunals were revoked and on 1 January 1993, all death sentences passed by civil or military courts or tribunals between 18 September 1988 and 31 December 1992 were commuted to transportation for life (life imprisonment).

231. According to information received by the Special Rapporteur, Myanmar authorities were responsible for carrying out arbitrary executions, death under custody and death due to torture within the context of armed conflict. This category of violations would include particularly torture (including rape) and arbitrary executions of persons during forced relocation of entire villages by the army. Other such violations included acts of reprisal by the military and torture or execution of persons suspected of being insurgents or giving aid to insurgents. Torture and death of porters by the military have also been prevalent. The ethnic minority groups, including the Shan, Karen, Karenni, Mon and the Rakhine Muslims were victims of these violations. Deaths of political leaders or students due to torture or cruel and inhuman conditions while under custody, however, occurred in circumstances unrelated to any armed conflict.

232. Hundreds of disappearances occurred when persons were taken from villages for forced portering, particularly from the Shan, Mon and Rakhine states. Dozens of Rakhine Muslim women told the Special Rapporteur that their husbands had been taken away by the military for forced portering and had never returned. In addition, many detentions of elected representatives, political leaders, students or other persons detained after the 1988 and 1990

demonstrations, began as disappearances. The torture reported of these persons occurred primarily during the period before the acknowledgement of the detentions by the Government. Acknowledgement was in most cases made after formal sentencing, which in some cases did not take place until days before the person was released. After the 1988 and 1990 demonstrations, thousands of persons were killed and many who never returned home were presumed by their families to have been killed by the military. The authorities have denied all such allegations and have not taken any steps to clarify the fate of these persons. It has been alleged that the bodies of hundreds of these persons were buried in mass graves in a military site near the airport and in Hlaing Thaya New Township where access is only possible by ferry.

233. Regarding the treatment of porters, torture, cruel, inhuman or degrading treatment, disappearance or arbitrary execution occurred while porters were forcibly under the power of the Myanmar army. Some of the violations, such as placing porters weighted down with loads of 45 kilogrammes or more on the front lines, occurred in conditions of armed conflict. But other allegations of violations of these physical integrity rights of porters occurred while under the power of the authorities of Myanmar outside of armed conflict situations. These reports were carefully verified by the Special Rapporteur in accordance with standard United Nations procedures.

234. Dozens of escaped porters told the Special Rapporteur that they had been tortured and had witnessed other porters being tortured or killed during forced labour and portering either for development projects or for the military. They told the Special Rapporteur that persons from villages were abducted for portering. Village headmen were forced to round up persons for the military. Persons were transported in cruel, inhuman or degrading conditions, beaten if weakened by exhaustion, disease and exposure and then often left to die.

235. In the case of the Myanmar Muslims of Rakhine state, testimony and information evaluated strongly indicate, that they have been singled out as objects of these physical integrity violations. As a result, approximately 250,000 Rakhine Muslims have been forced to flee across the border into Bangladesh as refugees. The Special Rapporteur was told by the Government that not one Myanmar Muslim from Rakhine state had fled Myanmar because of ill-treatment. One official suggested that they had been lured across the border by subversive elements and by the promise of international aid. Another Government authority stated that none of the persons in the Bangladeshi refugee camps had come from Myanmar and that they had voluntarily gone there from Dhaka, Bangladesh.

236. Between 7 and 14 December 1992, when the Special Rapporteur visited Myanmar, approximately 1,700 of these persons had returned (without international supervision) to Myanmar. As of this writing, over 17,000 have now been returned. International humanitarian organizations and members of the international community have expressed serious concern that the repatriations have not been carried out under conditions that are believed to have been voluntary, dignified or providing safety. Monitoring of the conditions of safety of these returnees is not being permitted by the Myanmar Government. This has given rise to fears of a resurgence of cyclical repression of these Myanmar Muslims as occurred at the time of independence in

1948, in 1978 when a census was carried out leading to the flight of 200,000 Rakhine to Bangladesh, and again in 1991 which gave rise to the present mass exodus to Bangladesh.

237. In regard to detention of political leaders and other persons attempting to participate freely in the political process, it was impossible for the Special Rapporteur to determine how many persons in this category remain in detention, but it is believed that there remain scores of persons still in detention without any of the judicial safeguards considered as a minimum standard by the international community. Among these is the Nobel Peace Prize recipient, Daw Aung San Suu Kyi, who was detained without trial in 1989 under the 1975 State Protection Act. The Act was then amended in August of 1991 when her term of detention had almost expired, in order to allow for prolongation of her detention.

238. The law was applied in an ex-post facto manner in contradiction to international legal standards. Recent reports stated that she would be released after the National Convention and after the Constitution was drafted and the new government had taken charge. Although over 1,700 persons were released under SLORC Order No. 11/92 in April 1992, the Special Rapporteur has received confirmed reports that new detentions of political leaders have taken place in 1993.

239. The National Convention preparatory to the drafting of the constitution was convened on 9 January 1993. After one and a half days the Convention was postponed reportedly because some elected representatives were preparing to bring up the question of the "leading role of the Tatmadaw (army) in the new government". Several persons were reportedly arrested for having distributed written material.

240. The National Convention was reconvened on 1 February. Discussion on the constitution is taking place under a panel of 45 chairmen elected by the 8 groups represented as delegates. Of these chairmen, only one is a member of the National League for Democracy which won 80 per cent of the vote in the national elections. It has been announced that the universities will reopen on 19 February 1993.

241. On the basis of the visit to Myanmar and the well-documented information received, the Special Rapporteur has assessed that serious repression and an atmosphere of pervasive fear exist in Myanmar. He found that there is a lack of accountability on the part of the Government and an absence of legal and administrative protection and/or recourse available for victims and families of victims of human rights abuses. In the light of these findings, the Special Rapporteur recommends that the Commission on Human Rights continue its close monitoring of the situation of human rights in Myanmar and extend the mandate of the Special Rapporteur to report to the Commission at its fiftieth session.

VII. RECOMMENDATIONS

242. In the light of the above conclusions, the Special Rapporteur submits the following recommendations for the consideration of the Government of Myanmar:

(a) Although the Special Rapporteur believes the Government should give effect to the political will of the people by transferring power to the freely and fairly elected civilian government; nevertheless, he is of the opinion that implementation of the following non-political, human rights recommendations should not be delayed by, nor subordinated to, considerations of political transition.

(b) The Government of Myanmar should fulfil in good faith the obligations it has assumed under Articles 55 and 56 of the Charter of the United Nations "to take joint and separate action in cooperation with the Organization for the achievement of ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion." Other rights under the Charter should not be invoked as limitations on these obligations assumed erga omnes.

(c) The Government of Myanmar should consider accession to: the International Covenants on Human Rights; the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment and to the two protocols additional to the Geneva Conventions of 1949. In addition, it should immediately withdraw its reservations and understandings to articles 15 on freedom of association and 37 regarding the prohibition of torture of minors, of the Convention on the Rights of the Child.

(d) The system of law, both constitutionally and legislatively, in Myanmar should be regularized to be accessible to those to whom it would be applied, to be clear and unequivocal and to be equitably applied. The ongoing state of emergency should be lifted and martial law in the form of SLORC Orders and other emergency legislation should cease to be the basis of law.

(e) Myanmar law should be brought into line with accepted international standards regarding protection of the physical integrity rights. Among these international standards are the right to life, protection against disappearance, prohibition of torture, cruel, inhuman or degrading treatment, providing humane conditions for all persons under detention and granting the minimum standard of judicial guarantees, as accepted by the international community, in order to further ensure the physical integrity of all persons under all forms of detention. Freedom of expression should be allowed including a free press and media. The Special Rapporteur recommends that constitutional and international legal experts from different regions be invited by the Government of Myanmar to share their expertise with Myanmar in the drafting of the new constitution and other legislation.

(f) The Government should take measures to comply with its obligations under ILO Convention No. 29 by eradicating the practice of forced portering and other forced labour which has provoked systematic torture, cruel inhuman and degrading treatment or punishment, disappearances and mass arbitrary executions. It should also take immediate steps to amend and implement legislation in accordance with ILO Convention No. 87. In compliance with this Convention, it should allow for the existence and practice of free trade unions and free association for the purpose of participation, in the civil and political as well as economic, social and cultural life of the country.

(g) The 1982 Citizenship Law should be revised or amended to abolish its over-burdensome requirements for citizenship. The law should not apply its categories of second-class citizens in a manner which has discriminatory effects on racial or ethnic minorities particularly the Rakhine Muslims. It should be brought in line with the principles embodied in the Convention on the Reduction of Statelessness of 30 August 1961. The Union of Myanmar should consider ratification of both this Convention and the Convention relating to the Status of Refugees of 28 July 1951 and its Additional Protocol of 31 January 1967.

(h) In order to promote repatriation of the Myanmar Muslims and other minorities, the Government should create the necessary conditions of respect for their human rights. The Government should assure, in law and practice, their safe return and resettlement in villages of origin. To this end, it should also promote their complete civil, political, social, economic and cultural participation in Myanmar without restriction or discrimination due to status.

(i) The Special Rapporteur recommends, in the light of the seriousness of the refugee and repatriation problem, and the grave threat this situation poses to the physical integrity of Myanmar ethnic and racial minorities as well as to the peace and security in the region, that an international human rights monitoring team, in conjunction with the mandate of the Special Rapporteur, be allowed access to the border areas. In addition, this team should be allowed access to the sites of repatriation within Myanmar. This team would operate with an integrated human rights/humanitarian approach with consideration for the refugee and repatriation issues. It is suggested that it be composed of independent experts and selected representatives of the specialized agencies with expertise in the relevant areas.

(j) Military and law-enforcement officials should be thoroughly informed and trained as to their responsibilities for the treatment of all persons as set out by international human rights instruments and humanitarian laws, standards which should be incorporated into Myanmar national legislation.

(k) Given the magnitude of the abuses, official condemnation should be made by the Government of all acts by authorities involving human rights violations. Such acts, including all acts of intimidation, threat or reprisal, should not benefit from the present system of complete denial and impunity of the Government.

(l) Daw Aung San Suu Kyi and all other political leaders including the elected political representatives, students, workers, peasants and others arrested or detained under martial law after the 1988 and 1990 demonstrations, or as a result of the National Convention, should be tried by a properly constituted and independent civilian court in an open and internationally accessible judicial process. If found guilty in such judicial proceedings, they should be given a just sentence, alternatively, they should be immediately released, with the responsibility of the Government to refrain from all acts of intimidation, threat or reprisal to them and their families.